Supreme Court of the United States.

No. 13, ORIGINAL.

OCTOBER TERM, 1876.

Ex parte, CONRAD A. JORDAN, HENRY AMY, EDWARD LIVINGSTON, FREDERICK P. JAMES, THEODORE HOUSTON, JOHN E. WILLIAMS, and NATHANIEL A. COWDREY,

Petitioners.

In the Matter of ABRAM S. HEWITT et al., Trustees, etc.,

vs.

THE NEW YORK and OSWEGO MIDLAND RAILROAD COMPANY et al.

Return or answer of the Judges of the Circuit Court of the United States for the Southern District of New York to the Petition and Order to show cause within mentioned.

WILLIAM M. EVARTS,
Of Counsel for the Judges.

New York:
MARTIN B. BROWN, LAW PRINTER AND STATIONER,
Nos. 201, 203 & 205 William Street.

1876.

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held at the Court House in the City of New York on the 9th day of December, 1876. 1

Present—The Hon. SAMUEL BLATCHFORD, *Judge*.

In the matter of ABRAM S. HEWITT *et al.*, Trustees, etc.,

vs.

THE NEW YORK AND OSWEGO RAILROAD COMPANY. 2

An order having heretofore issued out of the Supreme Court of the United States upon the petition of Conrad A. Jordan, Henry Amy, Edward Livingston, Frederick P. James, Theodore Houston, John E. Williams, and Nathaniel A. Cowdrey, petitioners, directed to the Judges of the Circuit Court of the United States for the Southern District of New York, and commanding them to show cause, before said Supreme Court, why a writ of mandamus should not issue to them, the said judges, commanding them to allow the appeal of the said petitioners, as of the second day of October, 1876, pursuant to the prayer of the said petition, now it is hereby 3

ORDERED, that the order and the annexed statement be and the same are hereby made the answer or return of the judges of this Court to the said order, to show cause, and the Clerk of the Court is directed to attest copies of this order and of said statement accordingly.

SAML. BLATCHFORD.

4 SUPREME COURT OF THE UNITED STATES.

No. 13, ORIGINAL, OCTOBER TERM, 1876.

Ex parte—CONRAD N. JORDAN, HENRY AMY, EDWARD LIVINGSTON, FREDERICK P. JAMES, THEODORE HOUSTON, JOHN E. WILLIAMS, and NATHANIEL A. COWDREY,

Petitioners.

5

In the Matter of ABRAM S. HEWITT *et al.*, Trustees, etc.,

vs.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY *et al.*

6

Return or answer of the Judges of the Circuit Court of the United States for the Southern District of New York to the petition and order to show cause within mentioned.

We, the Judges of the Circuit Court of the United States for the Southern District of New York, do certify, answer, and return to the Supreme Court within men-
7 tioned, as and for cause why a writ of mandamus should not issue to us, the said judges, commanding us to allow the appeal of the said petitioners as of the second day of October, 1876, pursuant to the prayer of their said petition, as follows, viz.:

The complainants, being the trustees under the first mortgage upon the New York & Oswego Midland Railroad prior to the 15th day of November, 1873, filed a bill

of complaint for the foreclosure of the mortgage, setting 8
out in full the facts entitling them to a foreclosure and
a sale of the mortgaged property, a copy of which bill is
hereto annexed, marked

The mortgage provided, in case of a default upon the
bond and entrance by the trustees, "That the expenses
of taking, holding, and managing said property and prem-
ises, if possession be taken, shall be paid from the income,
and, if necessary, from the sale of the property and
premises by the said trustee or trustees, as the case may 9
be, for the time being."

As a part of their bill of complaint, it was prayed:
"That a receiver may be appointed, according to the
course and practice of this Court, with the usual power of
receivers, in like cases, of all the property, equitable in-
terest, things in action, effects, moneys, receipts and earn-
ings, rights, privileges, franchises and immunities of the
said railroad company, and of all other property included 10
in and covered by the said mortgage." Thereupon, an or-
der to show cause was taken out by the complainants, why
a receiver should not be appointed, in pursuance of the
prayer of the bill of the complaint.

At this time the road was in the hands of Abram S.
Hewitt, one of the complainants, as receiver, in a suit
then pending for the foreclosure of a second mortgage on
the railroad, and other property covered by the said first
mortgage, and, on the return of the order to show cause,
the complainants presented and filed the affidavits of said 11
Abram S. Hewitt and of Theodore Houston, one of the
petitioners, of which the following are copies (with the
exception of Schedule "A," referred to in the affidavit of
Hewitt, which is here omitted as immaterial).

12 CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

JOHN G. STEVENS, ABRAM S. HEWITT and CHARLES W. OPDYKE, Trustees,

Complainants,

13 *and*

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY and others,

Defendants.

City and County of New York, *ss.:*

14 ABRAM S. HEWITT, one of the complainants, being duly sworn, deposes and says, that on the 18th day of September, 1873, he was duly appointed by this Court, Receiver of the New York and Oswego Midland Railroad Company, as appears by a copy of the order hereto annexed and marked Schedule "A."

Deponent further says, that he entered upon the duties of the said office and has since that time been engaged in operating and maintaining the road of the said New York
15 and Oswego Midland Railroad Company. That he found the affairs of the company in such a condition that the appointment of a receiver was absolutely necessary in order to preserve the said road as a means of public travel and for the preservation of the property covered by the mortgage. That such appointment was had in a suit brought in this Court to foreclose what is known as the second mortgage of the said company. That application has been made to him and to his co-trustees, the complainants in this cause, to foreclose what is known as the

first mortgage. That the said company is in arrears to 16
its employees since the first day of January, 1873, to the amount of over four hundred thousand dollars. That a large amount of the rolling stock now in use upon the said road has been partially paid for by the said company, but is held by it under agreement providing that the title to the property shall remain in the vendor until the whole amount of the purchase-money shall have been paid. That default was made at a period before deponent's appointment as receiver in the payment of a portion of the purchase-money on the said rolling stock, and that such 17
stock, or a large portion of it, is necessary for the operation and maintenance of the said railroad.

That the vendors of the said rolling stock now demand the return of the same, but they are willing to transfer the said property to the receivers to be appointed in this action absolutely, and to subject the same to the lien of the first mortgage set forth in the bill of complaint upon receiving a certificate of indebtedness to be signed by any receiver or receivers who may be appointed in 18
this action. That from his knowledge of the affairs of the company and from information that he has derived while acting as receiver, he verily believes that it is necessary for the preservation of the property of the said New York and Oswego Midland Railroad Company that the same be immediately placed in the hands of receivers in this action, subject to the order of this Court. That in addition to the pay of the laborers now in arrear, and the amount due for rolling stock, there are large claims for supplies furnished to the said road. That the 19
said company is now operating with the branches about four hundred and twenty-eight miles of road, extending from Oswego, on Lake Ontario, to the city of New York, and from Scipio, in the county of Cayuga, to the main line at Norwich, New York, a distance of about seventy-five miles.

That the last line of the said road is a United States mail route. That the said company is engaged in carrying the United States mail over its line. That it has a

20 considerable passenger and freight traffic, and that many persons whose business is in the city of New York depend upon the said line of railroad for their daily access to the said city of New York, and that many persons along the line of the said road depend upon the same for the transaction of their daily business upon intermediate points upon the said road. That the suspension of the operations of the said road would be a great public detriment.

21 And deponent further says, that there are sundry leased lines, the rental of which will soon be in arrear, and which lines of railroad so leased to the said railroad company are, in the opinion of deponent, and the experts whom he has consulted, of great advantage to the said New York and Oswego Midland Railroad Company and its several bondholders. That there will be no money to pay the rental, but deponent believes that unless some arrangement can be made for such rental by the issuing of receiver's certificates in this cause, the said leased lines will have to be abandoned.

22 And deponent further says, that he has found the management of the said road to be onerous, and that he intends to apply to this Court to have associated with him as joint receiver, under the second mortgage, John G. Stevens, one of the complainants in this cause, and one of the co-trustees with this deponent in the first mortgage mentioned in the Bill of Complaint.

ABRAM S. HEWITT.

Sworn to before me, this 13th day of November 1873.

23 CHARLES E. MILLS,
Notary Public for N. Y. County, in N. Y.

[SEAL.]

U. S. CIRCUIT COURT, 24

SOUTHERN DISTRICT OF NEW YORK.

JOHN G. STEVENS, CHARLES W. OPDYKE, ABRAM S. HEWITT,

against

THE NEW YORK AND OSWEGO MIDLAND RAILROAD CO. 25

In Equity.

City and County of New York, *ss.*:

THEODORE HOUSTON, being duly sworn, says: That he is Secretary and Auditor of the New York and Oswego Midland Railroad Company, defendant herein; that the amount due from the said company for wages of employees prior to September 18, 1873, is the sum of four 26 hundred and fifty-nine thousand three hundred ($459.300) dollars.

That the amount due from the said company for cars and locomotives for which liens are claimed to exist upon such cars and locomotives in the possession of the company is the sum of six hundred and two thousand seven hundred and twenty dollars and seventy-six cents ($602,720.76).

That there will become due from the said company for 27 rentals of the railroads leased from the Utica, Clinton and Binghampton Railroad Company and the Rome and Clinton Railroad Company, on or about the 26th day of December, 1873, about the sum of fifty-five thousand dollars ($55,000); that the deponent is informed by the attorney of the said company that it will be necessary, in order to preserve the rights and property of the company covered by the first and second mortgages, to pay within

28 a few months the sum of twenty-five thousand dollars ($25,000), or thereabouts.

That in order to preserve and make serviceable the equipment of the railroad of the said company, extensive repairs are absolutely necessary, the cost of which repairs will be, as your deponent believes, about the sum of seventy-five thousand dollars ($75,000).

That in order safely to operate said railroad many new
29 rails are needed upon such railroad, and that to supply such rails, there will be needed about the sum of fifty thousand dollars ($50,000).

That in operating the said railroad, since the receiver was appointed by the order of this court, under the disadvantages attending the operation of a comparatively new line of railroad, and consequent upon the financial condition of the company, the receipts have been less than the actual expenses, and that from this cause a deficit of
30 about sixty thousand dollars ($60,000) now exists. That in the future operation it is believed that no such loss will be incurred, but that to preserve the economical management of the railroad a margin of funds should always remain in the hands of the receiver, and that for this purpose the sum of ninety thousand dollars ($90,000) is, in the opinion of the deponent, no more than is advisable.

That the total amount of the sums hereinabove given is the sum of one million four hundred and fifteen thousand dollars.

31 [L. S.] (Signed) THEO. HOUSTON.

Sworn to before me, this)
day of November, 1873,)

(Signed) WM. C. GULLIVER,
Notary Public (2), N. Y. County.

On the eighteenth day of November, 1873, the said affidavits, and each of them, having been read in open court, the Circuit Court of the United States for the

Southern District of New York made and entered its 32
decree, of which the following is a copy, to wit:

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

Between JOHN G. STEVENS, CHARLES W. OPDYKE, and ABRAM S. HEWITT, 33

Complainants,

and

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY and others, Defendants.

An order having been granted in this suit, returnable 34
on the fifteenth day of November, eighteeen hundred and seventy-three, to show cause why a Receiver, or Receivers of the property, effects, rights, and franchises of The New York and Oswego Midland Railroad Company should not be appointed, as prayed for in the Bill of Complaint, the hearing of which order was adjourned until this eighteenth day of November, 1873, and it appearing to the Court that Abram S. Hewitt, one of the complainants herein, is now in possession of the said property, effects, rights, and franchises, as Receiver, under an order of this Court, bearing 35
date the eighteenth day of September, 1873, appointing him such Receiver in a certain cause now pending in this Court, wherein the said Abram S. Hewitt, as Trustee, is complainant, and the said The New York and Oswego Midland Railroad Company and others, are defendants. And it further appearing that by an order this day made, upon the petition of the said Abram S. Hewitt, in the said cause, John G. Stevens, one of the complainants in this

cause, has been appointed Receiver with him in the said cause, wherein the said Abram S. Hewitt is complainant, and the said The New York and Oswego Midland Railroad Company and others, are defendants; and after hearing Mr. Ashbel Green for the complainants, and Mr. David L. Follett for the defendants, De Wolf and Macy, Mr. Wm. S. Opdyke for the said railroad company, and Mr. A. R. Lawrence for The Mercantile Trust Company, defendants—

It is ordered and decreed, and this Court doth on this eighteenth day of November, 1873, order and adjudge that without prejudice, nevertheless, to any rights acquired, or obligations imposed by the aforesaid order of this Court, bearing date the eighteenth day of September, eighteen hundred and seventy-three, or by the aforesaid order, this day entered in the same cause, Abram S. Hewitt and John G. Stevens be, and they are hereby appointed Receivers in this cause, with power to enter upon and take possession of the railroad of said New York and Oswego Midland Railroad Company, and all its branches, extensions, and leased lines of railroad, together with all supplies of materials provided by said company to be used in the construction, reconstruction, and repair of said road, or to be used in operating the same, with all side tracks, switches, station-houses, warehouses, water stations, turntables, rights of way, and grounds in use or necessary, or convenient to be used in operating said road belonging to said company, also all locomotives, engines, cars, and rolling stock of every kind and description, owned by and belonging to said company, and all tools and impliments used in operating said road, or provided therefor, and machine shops, and all workshops, and the machinery, tools, and implements therein, and stock of wood, iron or other materials on hand, belonging to said company to be used in the construction of shops or shop machinery, and all money credits and choses in action belonging to said company, and all other property, real or personal, of whatever name, nature, or description, and wheresoever situate, belonging to said company, and provided by it to be used in the prosecution of its business, whether the same be in actual use or not,

and the same to hold, use and dispose of under the order 40
and direction of this Court, to be made from time to time herein and therewith, until otherwise ordered, the said Receivers shall operate said company's road, extension, leased lines, and branches throughout the whole extent thereof, according to the usual course of business thereof, and to the best advantage, for the interest of parties concerned, and generally to put and keep said road, its rolling stock and fixtures and appurtenances in thoroughly good, efficient, and safe condition for use, and to provide, either by lease or by purchase, for cash or credit, or partly for 41
cash and partly on credit, rolling stock and equipment whenever necessary. And the corporate officers of said company, their agents, servants, and employees, having the custody and charge of said property and effects of said company, or any part thereof, to be taken possession of by said Receivers as aforesaid, are hereby ordered and required forthwith, upon the request of said Receivers, to surrender the same; and all books, papers, and accounts, and other evidences of debts due to said company to them, their agents or employees, and all of the same, without 42
any such actual delivery, shall immediately, upon their giving a bond and taking the oath herein required, be held and taken to be vested in their actual possession, and subject to their order, for all purposes needful in the prosecution of the business of the said company.

And the said Receivers are hereby authorized and empowered to retain, employ and pay all such agents, servants, laborers, clerks and assistants, as in their discretion may be necessary under them to carry this order into effect with economy and prudence, and to make, enter into, and per- 43
form all contracts for the obtaining of necessary supplies, and for the prosecution of said business. And for the purposes above named, and for the purpose of paying all rentals upon leased lines of railroad, and equipments and terminal expenses, said Receivers, subject to the further order of the Court, are hereby fully authorized and empowered to appropriate and apply the property, money, and effects aforesaid, vested in them as aforesaid, with the current earnings of said road and business, so far as the same may

be necessary, and said Receivers are hereby ordered anp required to keep or cause to be kept in a regular and systematic order, strict and regular accounts of the business of said trust in their hands, and of the daily receipts and disbursements of money by them, showing the items in detail, and they are required to file in the office of the Clerk of this Court, once in every three months, an abstract account of their receipts and disbursements, and shall, as often as required by the special order of the Court, make full reports of their doings and settle their accounts.

And the said Receivers are also hereby ordered and required to deposit the surplus money accruing in their hands, over and above their current expenditures, in The United States Trust Company, in the City of New York, on interest to their credit as Receivers herein.

It is further ordered by the Court that said Receivers, out of the net earnings which may come into their hands from the operation of the road, and as speedily as the same can be done without prejudice to the current business, pay all such balances now due to the operatives and persons employed heretofore by the said company in the prosecution of its business in operating its road, and in maintaining and keeping the same in repair since the first day of January, 1873, also all such balances of accounts due to other railroad companies by way of rentals or terminal expenses, since the first day of January, 1873, as it shall be necessary to pay to secure the future operation of the said railroad and leased lines.

The Receivers shall also pay all sums which are now or may hereafter become due for taxes upon any of the property coming into their hands as Receivers; also all interest or principal due, or to become due upon any purchase of property made by the said railroad company, and which, in the judgment of said Receivers, it will be beneficial to the estate in their possession to pay; also all such

sums as may be due for rights of way, or for fencing as in 48
the judgment of the said Receivers, it will be beneficial to the estate in their possession to pay ; also to purchase such additional rights of way as may be necessary for the operation of said road, its branches and extensions.

And to this end said Receivers are authorized to audit all claims and accounts justly due from said company, so authorized to be paid, as aforesaid, and shall report the same to this court, as may be required from time to time, with the evidence thereof in each case.

And the said Receivers are further directed to proceed 49
with all practicable dispatch, after they enter upon the discharge of their duties, to take an inventory of all and singular the property and effects of every description which may come into their possession, or under their control, in virtue of this order, and to file such inventory in this Court.

And the Receivers are further empowered, in their discretion, to remove any of the officers or employees of said railroad company other than the President and Directors thereof, and such other officers as pertain to and are neces- 50
sary to maintain the corporate organization ; but, notwithstanding this reservation, the entire management of said road, and the power to appoint and remove all superintendents, engineers and other agents or employees in any way concerned in the operating of said road, shall belong to the Receivers.

And for the purpose of providing money for the payment of amounts due to employees, for the purchase of rolling stock, equipment and supplies, and for the payment of interest and principal on property purchased by the 51
said Receivers, or said railroad company, and of sums due for rights of way, and for such additional rights of way as may be necessary to purchase for the operation of said railroad, and for fencing and for the payment of any rental due for leased lines, said Receivers may, from time to time, issue their certificates in such general form as shall be approved by this Court, providing for the payment of the sums therein respectively named out of any moneys applicable for that purpose, the amount of which certifi-

cates outstanding at any one time shall not in the aggregate exceed the sum of one million four hundred and twenty-five thousand dollars, until the further order of this Court, and shall bear interest at the rate of seven per centum per annum, and the sum or sums represented by such certificates shall, unless previously discharged, be paid out of any moneys realized upon a foreclosure and sale of the mortgaged property mentioned in the Bill of Complaint, equally with any other liabilities incurred by the Receivers in the management of the said property, the operation of the said railroad, and the protection of the said property coming into their hands as such Receivers.

The Receivers, acting in pursuance of this or any order or decree of this Court, herein, in good faith, shall not be individually liable for any breach of any contract entered into by them as such Receivers, or for the payment of any certificate or other obligation given by them as such Receivers, or for any injury to the person or property of the parties or of third persons, or for the faults or negligences of their subordinates; but the property, moneys and effects that shall at any time be in their hands as such Receivers shall be bound for all such breaches or wrong, and may from time to time, as may be necessary, be applied in such manner as this Court shall direct.

And it is further ordered, that the said defendants have leave, at any time within ninety days from this date, to show cause, if any they have, why this order should be set aside, vacated or amended, upon giving to the complainants or to their solicitors reasonable notice of their motion, and that upon the hearing of such motion the matter of the same shall be considered, without prejudice to the defendants, from the order now entered.

It is further ordered, that the said Receivers, before entering on their duties aforesaid, shall enter into a bond, with two sureties, to the acceptance of this Court, in the penal sum of one hundred thousand dollars, conditioned for the faithful performance of all duties enjoined upon them by this order.

And it is further ordered, that the Receivers in this cause shall assume and become liable as such Receivers, but not

individually, for all debts or obligations which may have been incurred by Abram S. Hewitt, as Receiver, or which shall hereafter be incurred by Abram S. Hewitt and John G. Stevens, or either of them, as Receivers, in the proper discharge of his or their duty, as well under the order of the eighteenth day of September, 1873, as under the order this day entered in said cause wherein Abram S. Hewitt is complainant and the said railroad company and others are defendants. 56

And it is further ordered, that the said Abram S. Hewitt and John G. Stevens shall take an oath before the Clerk of this Court, faithfully to perform their duties as Receivers in this cause. 57

(Signed) SAMUEL BLATCHFORD.

[SEAL.]

Attest: KENNETH G. WHITE, Clerk.

This order was made after hearing counsel for all the parties who were then defendants in the suit with the acquiescence of all the parties thereto. 58

Thereafter, to wit, on or about the 22d day of December, 1873, the said Abram S. Hewitt and John G. Stevens presented their certain petition, thereafter filed in said Court. Due notice of the application for the relief prayed for in the petition was given by the complainants and admitted by all the other parties to the suit. The petition, notice, and admissions were as follows: 59

60 CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

Between JOHN G. STEVENS, ABR M S. HEWITT and CHARLES W. OPDYKE, Trustees,

61 Complainants,

and

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, and others,

Defendants.

62 The petition of Abram S. Hewitt and John G. Stevens respectfully shows to the Court:

That they were, on the eighteenth day of November, one thousand eight hundred and seventy-three, duly appointed by an order of this Court, made in the above-entitled action, receivers of the New York and Oswego Midland Railroad, with authority to operate said railroad and its leased lines, and that the said order also provided that your petitioners, for the purpose of providing money for certain purposes therein named, might from time to
63 time issue their certificates in such general form as should be approved by this Court, providing for the payment of the sums therein respectively named, out of any moneys applicable for that purpose. And that the sum or sums represented by such certificates should, unless previously discharged, be paid out of any money realized upon a foreclosure and sale of the mortgaged property mentioned in the bill of complaint in this action, equally with any other liability incurred by your petitioners in the management of the said property, the operation of said railroad,

and the protection of the said property coming into their 64
hands as such receivers.

And your petitioners further show, that they are trustees with Charles W. Opdyke of the first mortgage mentioned in the bill of complaint in this cause, and that the holders of bonds secured by the said mortgage are very numerous and mostly unknown to your petitioners, and that your petitioners pray the aid of this Honorable Court in their capacity of trustees and complainants herein.

Your petitioners further show, that among the other property which came into their hands as such receivers, 65
was certain rolling stock, held under certain agreements for the purchase thereof, which agreements are substantially in the same form and the legal effect of which agreements your petitioners are advised by their counsel and verily believe, was to retain the title to the said rolling stock in the vendors thereof until the whole amount of the purchase money or price to be paid for such rolling stock should have been fully paid or satisfied. And the said agreements also contained a clause, the legal effect of which, as your petitioners are advised and believe, is to enable the 66
vendors to resume possession of the said property and to sell the same.

Your petitioners further show, that the property held under such agreements consists of seventeen locomotives held under an agreement with the Rhode Island Locomotive Works, two locomotives held under an agreement with the Rogers Locomotive Works, fifty box cars, two hundred flat cars, and one hundred and fifty gondola cars, held under an agreement with the Tredegar Company, five passenger cars, six smoking cars, and four baggage 67
cars held under an agreement with the Cummings Car Works, and one hundred gondola cars held under an agreement with the Columbia Iron and Manufacturing Company.

And your petitioners further show, that a considerable portion of the purchase money for said cars was paid to the Tredegar Company and to the Rogers Locomotive Works, that some portion has been paid to the Columbia Iron and Manufacturing Company, and some portion to

68 the Cummings Car Works, but that the vendors of the said property demand possession thereof and threaten to reclaim the same unless the amount of the balance due for the purchase money of the said cars shall be paid or satisfactorily secured to them respectively.

That the said rolling stock is absolutely necessary for the economical and advantageous maintenance and operation of the said railroad.

That your petitioners verily believe that irreparable damage will come to the property in their hands, as re-
69 ceivers, unless some arrangement can be made with the vendors of the said property respectively, by which said rolling stock shall be retained in the hands of your petitioners, as receivers, to be used in the operation and maintenance of the said railroad.

Your petitioners further show, that they believe that satisfactory arrangements can be made with the vendors of the said rolling stock for the purchase of their remaining interest in the said rolling stock, they receiving and taking in payment thereof the certificates of your peti-
70 tioners, as such receivers, in the form hereinafter set forth.

And your petitioners further show, that there will become due on the twenty-sixth day of December, one thou sand eight hundred and seventy-three, the sum of fourteen thousand four hundred and fifty-eight dollars and thirty-four cents, to the Rome and Clinton Railroad Company, for the lease of their road, under an agreement made and entered into on the fifteenth day of January, one thousand eight hundred and seventy-two, between the said Rome and Clinton Railroad Company and the New York and
71 Oswego Midland Railroad Company, and the Delaware and Hudson Canal Company, and also the sum of thirty-six thousand nine hundred and fifty-eight dollars and thirty-four cents, for the lease of the Utica, Clinton, and Binghamton Railroad, under an indenture made and entered into the fifteenth day of January, one thousand eight hundred and seventy-two, between the Utica, Clin-

ton, and Binghamton Railroad Company, and the New 72
York and Oswego Midland Railroad Company, and the
Delaware and Hudson Canal Company, and unless pro-
vision is made for the payment of the moneys due on the
said leases, your petitioners fear they will be dispossessed
of the said property.

Your petitioners further show, that in their judgment
it is vitally necessary for the proper operation of the said
New York and Oswego Midland Railroad that the said
leased lines shall be continued in their possession, and that
they have been assured that the requisite amount of money 73
can be obtained for the purpose of paying said rents by a
sale of certificates, to be issued by your petitioners, under
the authority of this honorable court.

Your petitioners further show, that they believe a cer-
tificate in the following form will be received by the ven-
dors of said rolling stock, and can be used in procuring
money in order to pay the rent of such leased lines, viz.:

"This is to certify that there is due o the bearer hereof,
from the receivers of the New York and Oswego Midland
Railroad, as such receivers, and not personally (for equip- 74
ment furnished to the said receivers), or (for money pro-
cured to pay rentals on leased lines), the sum of
dollars, which sum bears interest at the rate
of seven per centum per annum—the principal sum to be
paid on the first day of January, one thousand eight hun-
dred and seventy-seven, unless previously discharged by
moneys in the hands of the receivers from time to time,
applicable thereto, or by moneys realized upon the fore-
closure and sale of the mortgaged property in the hands of
the receivers. The interest thereon is to be paid on the 75
presentation and surrender, at the office of the receivers,
in the city of New York, of the annexed interest warrants
as they severally become due, as follows: One year's inter-
est on the first day of January, one thousand eight hun-
dred and seventy-five, and semi-annual interest on the first
days of each succeeding July and January, until the prin-
cipal sum shall be fully satisfied.

In case any installments of interest shall remain unpaid
for the space of ninety days after any day whereon the

same shall be due and payable, and shall have been demanded, as aforesaid, the principal hereof shall, at the option of the holder, become due and payable immediately, anything herein contained to the contrary notwithstanding.

The holder hereof may from time to time apply to the Circuit Court of the United States for the Southern District of New York, for the sale of any property in the hands of the receivers of the said New York and Oswego Midland Railroad, or for the sale or application of any property liable therefor, for the purpose of providing for the payment of any sum due hereon.

This certificate is one of the series of certificates issued under the authority and by virtue of the order of the Circuit Court of the United States for the Southern District of New York, in Equity, in a suit wherein John G. Stevens, Abram S. Hewitt, and Charles W. Opdyke, trustees, are complainants, and the New York and Oswego Midland Railroad Company and others are defendants, bearing date the day of December, one thousand eight hundred and seventy-three, which certificates, to the amount secured thereby, are declared to be a debt of the receivers, incurred for the benefit and protection of the mortgaged property in their hands, and shall be a first lien thereon, and prior to the first mortgage and the interest thereon.

In witness whereof, we, as such receivers, but not personally, have signed this certificate this day of , one thousand eight hundred and seventy.

As Receivers of the New York and Oswego Midland Railroad.

Your petitioners further show, that they believe it will be advantageous to the operation of the railroad in their hands for them to have the power and authority to issue obligations in the shape of receiver's notes, payable at some short date, to be used for the purpose of the purchase of supplies, and the other expenses incurred by them

as receivers, and they believe that such obligations in the following form will be negotiable: 80

$ OFFICE OF THE RECEIVER'S OF THE NEW YORK AND OSWEGO MIDLAND RAILROAD, 111 LIBERTY STREET, NEW YORK CITY, 187 .

After date, we, as receivers of the New York and Oswego Midland Railroad, appointed by the Circuit Court of the United States for the Southern District of New York, but not personally, promise to pay to the order of 81

dollars, value received in
furnished for operating said road.

No. As Receivers of the New York and Oswego Midland Railroad.

Wherefore, your petitioners pray the instructions of this Honorable Court in the premises, and its approval of the forms of the said certificate and note, or such other form of certificate and note as to this Honorable Court 82 may seem meet in the premises.

ABRAM S. HEWITT,
J. G. STEVENS.

ASHBEL GREEN,
Of Counsel.

City and County of New York, *ss.:*

ABRAM S. HEWITT and JOHN G. STEVENS, being duly sworn, each for himself deposes and says, that the foregoing petition is true, to the best of his knowledge, information, and belief. 83

ABRAM S. HEWITT,
J. G. STEVENS

Sworn to before me, this 22d day of December, 1873,

HY. E. TELLER,
[SEAL.] Notary Public (39),
N. Y. C.

84 CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

Between JOHN G. STEVENS and others, Trustees,
Complainants,

85 *and*

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY and others,
Defendants.

Please to take notice that the petition hereto annexed,
86 with a copy of which you are herewith served, will be presented to the Circuit Court of the United States for the Southern District of New York, at No. 41 Chambers street, New York, on the 23d day of December, 1873, and an order asked thereon.

ASHBEL GREEN,
Counsel to Receivers.

Due service admitted December 22, 1873.

DAVID L. FOLLETT,
87 Solicitor for Defendants.

MILLER, PEET & OPDYKE,
Solicitors for R. R. Co.

ALEXANDER & GREEN,
Solicitors for Complainants.

ABM. R. LAWRENCE,
Solicitors for Merc. Trust Co.

On this application all the parties to the suit were represented by counsel, and it was stated to the Court that

the matters referred to in the petition had been the subject of a conference and that the proposed action had been acquiesced in as necessary by all parties, and thereupon in open court the same was assented to by the respective counsel. 88

Thereupon the Court made and entered the order, of which the following is a copy, viz.:

CIRCUIT COURT OF THE UNITED STATES, 89

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

Between JOHN G. STEVENS, ABRAM S. HEWITT, and CHARLES W. OPDYKE, Trustees,
Complainants,

and 90

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY and others,
Defendants.

Upon reading and filing the petition of John G. Stevens and Abram S. Hewitt, receivers of the New York and Oswego Midland Railroad, sworn to before Henry E. Teller, Notary Public, on the 22d day of December, one 91
thousand eight hundred and seventy-three, and after hearing Mr. Ashbel Green, of counsel for the complainants, and Mr. David L. Follett and Mr. William S. Opdyke, for the defendants, and it appearing to the Court that for the preservation of the property in the hands of the said receivers and the operation thereof, a necessity exists therefor—

It is, on this twenty-third day of December, 1873, ordered, that said receivers do issue their certificates of

92 indebtedness in the form hereinafter prescribed for the purchase of equipment and for the payment of rental of leased lines.

And said certificates, when issued, and the principal sum secured thereby and the interest payable thereon, shall be a debt of said receivers incurred for the benefit of the mortgaged property and for the protection thereof, and shall be and remain a first lien upon all of the property covered by the first mortgage, now in the hands of the said receivers and prior to said first mortgage and
93 to the interest thereon; and in case of default in the payment of the interest or principal of any of said certificates when due, the holder or holders thereof shall be entitled to have sufficient of said property sold for the satisfaction thereof, and for that purpose may from time to time apply to this court.

And said certificates shall be a part of the certificates authorized by the order made herein November 18, 1873, and shall be in the following form:

This is to certify, that there is due to the bearer hereof
94 from the receivers of The New York and Oswego Midland Railroad, as such receivers, but not personally (for equipment furnished to the said receivers), or (for money procured to pay rentals on leased lines), the sum of

dollars, which sum bears interest at the rate of seven per centum per annum. The principal sum is to be paid on the first day of January, one thousand eight hundred and seventy seven, unless previously discharged by moneys in the hands of the receivers from time to time applicable
95 thereto, or by moneys realized upon a foreclosure and sale of the mortgaged property in the hands of the receivers. The interest hereon is to be paid on the presentation and surrender at the office of the receivers in the city of New York, of the annexed interest warrants as they severally become due, as follows: One year's interest on the first

day of January, one thousand eight hundred and seventy- 96
five, and semi-annual interest on the first days of each succeeding July and January, until the principal sum shall be fully satisfied.

In case any installment of interest shall remain unpaid for the space of ninety days after any day whereon the same shall be due and payable, and shall, have been demanded as aforesaid, the principal hereof shall, at the option of the holder, become due and payable immediately, anything herein contained to the contrary notwithstanding. 97

The holder hereof may from time to time apply to the Circuit Court of the United States for the Southern District of New York, for the sale of any property in the hands of the receivers of the said New York and Oswego Midland Railroad, or for the sale or application of any property liable therefor for the purpose of providing for the payment of any sum due hereon.

This certificate is one of a series of certificates issued under the authority and by virtue of the order of the Circuit Court of the United States for the Southern Dis- 98
trict of New York, in Equity, in a suit wherein John G. Stevens, Abram S. Hewitt, and Charles W. Opdyke, trustees and complainants, and the New York and Oswego Midland Railroad Company and others, are defendants, bearing date the twenty-third day of December, 1873, which certificates to the amount secured thereby are declared to be a debt of the receivers incurred for the benefit and protection of the mortgaged property in their hands, and shall be a first lien thereon, and prior to the first mortgage and to the interest thereon. 99

In witness whereof, we, as such receivers, but not personally, have signed this certificate, this day of one thousand eight hundred and seventy-

As Receivers of the New York and Oswego Midland Railroad.

And it is further ordered that the said receivers may from time to time make and issue their promissory notes,

payable at short dates, for the purpose of procuring supplies and paying other expenses incurred by them in the management and operation of said railroad, the amount thereof outstanding at any one time not to exceed the sum of two hundred thousand dollars, and such notes to be in the following form:

$ OFFICE OF THE RECEIVERS OF THE NEW YORK AND OSWEGO MIDLAND RAILROAD, 111 LIBERTY STREET, NEW YORK CITY, 187 .

After date, we, as receivers of the New York and Oswego Midland Railroad, appointed by the Circuit Court of the United States for the Southern District of New York, but not personally, promise to pay to the order of
dollars, value received, in
furnished for operating said road.

No. As Receivers of the New York and Oswego Midland Railroad.

And it is further ordered, that the said notes shall be paid out of any moneys in the hands of the receivers applicable thereto, or out of any moneys realized upon a foreclosure and sale of the mortgaged premises, as a debt incurred by the receivers in the management of the property coming into their hands as such receivers.

And it is further ordered, that the said receivers shall not be individually or personally liable for the payment of any certificate or note given by them as such receivers, by virtue of this order.

(Signed) SAM'L BLATCHFORD.

Attest:
KENNETH G. WHITE, Clerk.

In pursuance of the terms of said order, certificates, in the form prescribed by the order, were issued to the holders of the rolling stock referred to, and the rolling stock was transferred to the receivers, and is a part of the property covered by the order of sale herein.

Upon the 18th day of April, 1874, the receivers made and filed their report thereof, of which the following is a copy, viz.: 104

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

105

Between ABRAM S. HEWITT and others, Trustees,
Complainant,
and
THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, and others,
Defendants.

106

To the Circuit Court of the United States for the Southern District of New York:

The undersigned, Receivers of the New York and Oswego Midland Railroad, do hereby report that the receipts and disbursements of the New York and Oswego Midland Railroad, from the first day of December, 1873, to the twenty-eighth day of February, 1874, both inclusive, are as follows, viz.: 107

December, 1873.

RECEIPTS.

Balance from Abram S. Hewitt, Receiver		$29,932 41
For passengers	$21,856 51	
freight	71,205 78	
telegraph	938 45	
express	4,546 23	
mail	2,325 83	

108	miscellaneous.....	$4,182 16	
	proceeds sale of lease Pier No. North river, by order of Court.....	23,000 00	
			128,054 96
			$157,987 37

DISBURSEMENTS.

109	For advance charges.....	$5,083 97	
	supplies, taxes, terminal, and other operating expenses..	17,097 43	
	Pay-rolls, Sept. 18 to 30, 1873.....	122 56	
	Pay-rolls, Oct., 1873..	8,683 16	
	" Nov., " ..	19,309 10	
	" Dec., " ..	1,368 83	
110	liens and expenses of sale of lease of Pier No.	23,000 00	
			134,665 05
			$23,322 32

January, 1874.

RECEIPTS.

111	Balance from December, 1873.....		$23,322 32
	For passengers.....	$20,171 62	
	freight.....	60,928 49	
	telegraph	481 02	
	express	1,208 11	
	mail.....	2,942 12	
	miscellaneous.....	3,106 72	
			88,838 08
			$112,160 40

DISBURSEMENTS. 112

For advance charges.....	$7,022 92		
supplies, taxes, terminal, and other operating expenses.....	40,396 90		
Pay-rolls, Sept. 18 to 30, 1873.....	60 16		
Pay-rolls, Oct., 1873..	1,059 62		
" Nov., " ..	6,979 73		
" Dec., " ..	9,455 25		
" Jan., 1874..	117 28		113
		$65,091 86	
		$47,068 54	

February, 1874.

RECEIPTS.

Balance from January.....		$47,068 54	
For passengers.....	$16,909 58		
freight.....	66,575 82		114
telegraph.....	495 81		
express.....	664 60		
mail.....	49 95		
miscellaneous.....	984 04		
$55,000 Receiver's certificates, issued at par.....	55,000 00		
accrued interest on D..	395 78		
		141,075 58	
		$188,144 12	115

DISBURSEMENTS.

For advance charges.....	$13,584 66	
supplies, taxes, terminal, and other operating expenses.....	21,798 31	
Rental Utica, Clinton & B. R. R., 6 months ending Dec. 31, 1873	35,340 28	

116	Rental Rome & Clinton R. R., 6 months ending Dec. 31, 1873...	12,621 53	
	First National Bank of Ellenville, by order of Court, Nov. 15, 1873	1,000 00	
	Pay-rolls, Sept. 18 to 30, 1873.....	146 95	
	Pay-rolls, Oct., 1873..	428 88	
	" Nov., " ..	626 06	
117	" Dec., " ..	60,555 04	
	Receiver's note No. 1, favor Hoy & Wilson due.....	2,410 68	
			148,512 39
	March 1, 1874, balance on hand.....		$39,631 73

118 We further report that as authorized by order of this Court, dated January 13, 1874, we have issued Receiver's notes in settlement of bills for supplies, as per vouchers on file, as follows, viz.:

In the month of December, 1873.....	$9,681 31
" January, 1874.....	12,093 57
" February, 1874.....	22,727 95
	$44,502 83

119 We further report, that as authorized by order of this Court, dated December 23, 1873, we have issued receivers' certificates of indebtedness, as follows, viz.:

In settlement of vendors' liens on rolling stock.....	$511,173 27
For money loaned to the receivers.....	55,000 00
	$566,173 27

We further report, that as authorized by order of this Court, dated January 13, 1874, we have issued receivers' certificates of indebtedness in settlement of employes'

claims for services against the New York and Oswego 120
Midland R. R. Co., amounting to $292,591.36.

New York, February 28, 1874.

STATE OF NEW YORK,
City and County of New York, } ss.:

ABRAM S. HEWITT and JOHN G. STEVENS, being duly sworn, say: That the foregoing is a true and correct abstract account of the moneys received by them as receivers of the New York and Oswego Midland Railroad, from December 1, 1873, to February 28, 1874, inclusive; also the disbursements on account of said road, and said receivers' notes and certificates of indebtedness issued by them for the same time, according to the best of their knowledge, information, and belief. 121

ABRAM S. HEWITT.
J. G. STEVENS.

Subscribed and sworn before me,
this 17th day of April, 1874, } 122

JAS. B. SWAIN, Jr.,
[L. S.] Notary Public.

Subsequently, the said Abram S. Hewitt, one of the receivers appointed in the said action, presented and filed his petition that his accounts as receiver might be passed before a Master of the Court, and that he might be discharged from further service as receiver. This petition was as follows: 123

124 CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

Between ABRAM S. HEWITT, Trustee,
Complainant,
and
125 THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, and others,
Defendants.

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

126

IN EQUITY.

Between JOHN G. STEVENS ABRAM S. HEWITT, and CHARLES W. OPDYKE, Trustees,
Complainants,
and
127 THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY and others,
Defendants.

The petition of Abram S. Hewitt, one of the receivers appointed in the above-entitled actions, respectfully shows to the Court: That on the eighteenth day of September, one thousand eight hundred and seventy-three, by an order of this Court, made on that day, he was ap-

pointed receiver of the New York and Oswego Midland 128
Railroad in the first above-entitled action.

And your petitioner further shows: That by a further order of this Court, made in the first above-entitled cause, on the eighteenth day of November, one thousand eight hundred and seventy-three, John G. Stevens, Esq., was appointed joint receiver with your petitioner of the New York and Oswego Midland Railroad, with all the powers conferred, and subject to all duties enjoined upon your petitioner as such receiver, under the said order of the eighteenth day of September, one thousand eight hundred 129
and seventy-three. And that your petitioner and said John G. Stevens were, by said order, declared to be the successors of your petitioner in said receivership.

And your petitioner further shows: That, on the eighteenth day of November, one thousand eight hundred and seventy-three, by an order of this Court, made in the second above-entitled action, on that day, without prejudice to any rights acquired, or obligations imposed, by the orders above set forth, your petitioner and John G. Stevens were appointed receivers in said cause of the New 130
York and Oswego Midland Railroad, and all it branches and extensions, and leased lines of railroad, and all other property, real or personal, wheresoever situate, belonging to said company, and provided by it to be used in the prosecution of its business, and to hold, use, and dispose of, under such order and direction of this Court as might be made, from time to time, until otherwise ordered.

That your petitioner and said John G. Stevens are receivers, as aforesaid, for the purchase of rolling stock, equipment, and supplies, and for the payment of interest 131
and principal on property purchased by the said receivers or said railroad company, and of sums due for rights of way, and for such additional rights of way as it might be necessary to purchase for the operation of said railroad, and for fencing, and for the payment of any rental due for leased lines, were, by said order, authorized, from time to time, to issue their certificates, in such general form as should be approved by the court, providing for the payment of the sums therein respectively named, out of any

moneys applicable for that purpose, the amount of which certificates, outstanding at any one time, should not, in the aggregate, exceed the sum of one million four hundred and twenty-five thousand dollars, bearing interest at the rate of seven per cent. per annum. And that the sums represented by such certificates should, unless previously discharged, be paid out of any moneys realized upon a foreclosure and sale of the mortgaged property, equally with any other liabilities incurred by the receivers in the management and protection of the property, and the operation of the road.

That the receivers, acting in pursuance of the order or decree of this Court, therein, in good faith, should not be individually liable for any breach of any contract entered into by them as such receivers, or for the payment of any certificate or other obligation given by them as such receivers, or for any injury to the person or property of the parties, or of third persons, or for the faults or negligence of their subordinates; but the property, money, and effects in their hands, as such receivers, should be bound for all such breaches or wrong, and might, from time to time, be applied, in such manner as this Court should direct.

And said order further directed, that your petitioner and said John G. Stevens, before entering upon their duties as receivers, should enter into a bond, with two sureties, to the acceptance of this Court, in the penal sum of one hundred thousand dollars, conditioned for the faithful performance of all the duties enjoined upon them by the said order.

And the said order further provided, that the said receivers should assume and become liable as such receivers, but not individually, for all debts or obligations which might have been incurred by your petitioner as receiver, or which might thereafter be incurred by your petitioner, and said John G. Stevens, or either of them, as receivers, in the proper discharge of his or their duty, as well under the order of the eighteenth day of September, one thousand eight hundred and seventy-three, as the order of the eighteenth day of November, one thousand eight hundred

and seventy-three, entered in the first above-entitled action. And your petitioner, and said John G. Stevens, were required by the terms of said order, to take an oath before the Clerk of this Court, faithfully to perform their duties as receivers in said cause. 136

And your petitioner further shows: That on the eighteenth day of September, one thousand eight hundred and seventy-three, in the first above-entitled action, he entered into a bond to the Clerk of this Court, in the penal sum of one hundred thousand dollars, with two sureties, each of whom justified in the sum of one hundred thou- 137
sand dollars, conditioned according to the terms of said order, and on that day said bond was duly approved by his Court, and filed with the Clerk thereof.

And your petitioner further shows: That on the nineteenth day of November, one thousand eight hundred and seventy-three, your petitioner and John G. Stevens, in the first above-entitled action, entered into a bond to the Clerk of this Court, in the penal sum of one hundred thousand dollars, with two sureties, each of whom justified in the sum of one hundred thousand dollars, con- 138
ditioned according to the terms of said order of the eighteenth day of September, one thousand eight hundred and seventy-three, and the order of the eighteenth day of November, one thousand eight hundred and seventy-three, made in the first above-entitled action, and on that day said bond was duly approved by this Court and filed with the Clerk thereof.

And your petitioner further shows: That on the nineteenth day of November, one thousand eight hundred and seventy-three, in the second above-entitled action, your 139
petitioner, and said John G. Stevens, entered into a bond, to the Clerk of this Court, in the penal sum of one hundred thousand dollars, with two sureties, each of whom justified in the sum of one hundred thousand dollars, conditioned according to the terms of said order of the eighteenth day of November, one thousand eight hundred and seventy-three, made in the second above-entitled action, and on that day said bond was duly approved by this Court and filed with the Clerk thereof.

140 That on the eighteenth day of September, one thousand eight hundred and seventy-three, your petitioner entered upon the discharge of the duties of his office, as sole receiver, under the order of this Court of the eighteenth day of September, one thousand eight hundred and seventy-three, made in the first-entitled cause, and took possession of the property mentioned in said order, and managed the same, as sole receiver, up to the nineteenth day of November, one thousand eight hundred and seventy-three.

141 That on the nineteenth day of November, one thousand eight hundred and seventy three, your petitioner, and said John G. Stevens, as joint receivers under the order of this Court made in the first above-entitled cause on the eighteenth day of November, one thousand eight hundred and seventy-three, and the order of this Court made on the eighteenth day of November, one thousand eight hundred and seventy-three, in the second above-entitled cause, took possession of the property mentioned in said orders, and have ever since managed the same as such joint re-
142 ceivers.

That on the day of , one thousand eight hundred and seventy- , your petitioner filed an inventory in this Court of all the property and effects of every description which came into his possession or under his control under the order of this Court of the eighteenth day of September, one thousand eight hundred and seventy-three, in the first above-entitled action.

And on the day of , one thousand eight hundred and seventy- , your petitioner
143 and said John G. Stevens filed an inventory in this Court of all the property and effects of every description which came into their possession or under their control under the order of this Court made in the first above-entitled action on the eighteenth day of November, one thousand eight hundred and seventy-three and the order of this Court made in the second above-entitled action on the eighteenth day of November, in the year one thousand eight hundred and seventy-three.

That since the appointment of your petitioner as sole

receiver, and the appointment of your petitioner and said 144
John G. Stevens as joint receivers, your petitioner has, and your petitioner and said John G. Stevens have, duly filed with this Court an account of receipts and disbursements by them as receivers, and have in all things complied with the rules and practice of the Court and the several orders made in the above-entitled action.

And your petitioner further shows: That at the time of his appointment as receiver as aforesaid, it was expected and understood, that said receivership would be of short duration. That since said appointment he has served 145
as such receiver without any compensation whatever.

That the health of your petitioner is such that he is advised by his physicians and believes that his life depends on his complete freedom from care, labor, and responsibility, and that a copy of letters from his physicians to his counsel are hereto annexed, marked respectively "A" and "B."

That it is your petitioner's purpose to carry out a long conceived intention to visit Europe. That he has been desirous for many months past of being relieved from his 146
duties and burdens of said receivership. That he is informed by the counsel for the complainants in this cause that in consequence of the answers, pleas and demurrers that have been interposed a considerable length of time may elapse before the said cause is brought to a determination. Your petitioner, therefore, desires that his accounts may be passed. That he may be discharged from said receivership and the bonds given by him canceled.

Your petitioner therefore prays that the honorable Court will grant an order that your petitioner, Abram S. 147
Hewitt, as receiver in the above-entitled causes, may pass his accounts, from the time of his appointment up to the time of receiving and paying his last item, before a Master of this Court, and that he may be discharged from further acting as such receiver, and that his and his sureties bonds may, upon such discharge, be cancelled.

Dated, March, 1875.

(Signed) ABRAM S. HEWITT.

ASHBEL GREEN, of counsel.

148 City and County of New York, *ss.:*

Abram S. Hewitt, being duly sworn, says: That he is the petitioner above named, and that the foregoing petition is true to the best of his knowledge, information and belief.

(Signed) Abram S. Hewitt.

Sworn to before me, this 10th day of March, 1875.

(Signed) Wm. C. Gulliver,
Notary Public (121),
[L. S.] New York County.

149

"A."

282 Fourth Avenue, March 1, 1875.

Hon. Ashbel Green:

Dear Sir—Mr. Abram S. Hewitt has been under my daily care for the last four weeks. His urgent symptoms have subsided, but there is no doubt that his complete recovery depends upon a prolonged term at perfect rest
150 from mental labor.

I am convinced that this can only be accomplished by a protracted absence from the country, and have so advised him.

Everett Herrick, M. D.

"B."

151 I concur with Dr. Herrick in the opinion herein expressed.

A. Clark,
Consulting Physician.

March 1, 1875.

Subsequently it was referred to Kenneth G. White, Master, to take and state the accounts of the receiver. The master's report was filed on the 29th day of April,

1875. In accordance with the request of one of the petitioners, Nathaniel A. Cowdrey, it contains a statement as to the issue and the amount of the receiver's certificates. The report, with schedule "B," and the contracts therein referred to, is as follows: 152

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

153

Between ABRAM S. HEWITT, Trustee, Complainant,

and

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, and others, Defendants.

154

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

Between JOHN G. STEVENS, ABRAM S. HEWITT, and CHARLES W. OPDYKE, Trustees,

155

and

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, and others, Defendants.

To the Circuit Court of the United States, for the Southern District of New York:

I, KENNETH G. WHITE, to whom it was referred by an

156 order of this court, bearing date the day of , 187 , to take and pass the accounts of Abram S. Hewitt and John G. Stevens, receivers appointed in the above-entitled actions, do hereby respectfully report that I fixed the 12th day of March, 1875, to proceed to take and state the accounts of Abram S. Hewitt and John G. Stevens, the receivers appointed in the above-entitled actions, and that I caused a notice, of which a copy is hereto annexed, marked "A," to be published in the *Daily Register*, and in the *Evening Post*, two news-
157 papers printed and published in the city of New York, for four days successfully, as appears by the affidavits hereto annexed, and that notice of such hearing was served upon the solicitors of the several parties, as appears by the proof of service hereto annexed.

I do further report, that I have been attended by the solicitors for the complainants, and have made an examination of the books of account and vouchers of the said Abram S. Hewitt and John G. Stevens, receivers as afore-
158 said, and that I find the said vouchers and books of account correctly kept, and the receipts and expenses correctly set forth in the reports of the said receivers, which have from time to time been filed in the office of the Clerk of this Court.

I do further report, that I received a notice from N. A. Cowdrey, Esquire, claiming to be a holder of bonds secured by the mortgage executed to the complainants in the second above-entitled cause as trustees, a copy of which
159 is also hereto annexed, marked "B," and that in pursuance of such notice, I do report that the receivers have issued their certificates

To the Utica, Clinton and Binghamton Railroad Company, for rental, bearing interest from January 1, 1875	$35,000 00	
	1,000 00	
		$36,000 00

To the Rome and Clinton Railroad Company, for rental, bearing interest from January 1, 1875.....	$12,500 00 1,000 00	$13,500 00	160
To employees of the New York and Oswego Midland Railroad Company, for services between January 1, 1873, and September 18, 1873.....	$402,721 32 1,637 29	404,358 61	161
All of the above-mentioned certificates were issued under the orders of November 18, 1873, and January 13, 1874. The reasons for their issue are set forth in the petition and orders.			
The receivers have also issued their certificates			162
To employees of the receivers for services rendered the receivers ..... issued under order of November 18, 1873, and March 6, 1875.		147,914 60	
The receivers have also issued their certificates			
To the Tredegar Company for vendor's lien on 50 box cars, 200 flat cars, and 150 Gondola cars, bearing interest from 1st January, 1874.....		234,302 98	163
Carried over		$836,076 19	
Brought over.....		$836,076 19	
To the Columbia Iron and Manufacturing Company for vendor's lien on 100 Gondola cars, bearing interest from January 1, 1874.....		58,695 06	

164	To the Cummings Car Works for vendor's lien on four baggage cars, 5 smoking and mail cars, bearing interest from January 1, 1874.....	$36,238 33	
	And on 2 baggage, mail, and express cars, 1 milk car, 4 caboose cars, 20 dump cars, 2 Gondola cars, 1 passenger car, bearing interest from		
165	January 1, 1874.....	10,644 90	
			$46,883 23
	To the Rhode Island Locomotive Works, for vendor's lien on 11 locomotives, bearing interest from January, 1, 1874... ...		171,292 00
	To George Opdyke & Co ...	$20,000 00	
	To Naylor & Company.....	20,000 00	
	To Perkins, Livingston & Post	10,000 00	
	To William H. Guion.....	5,000 00	
			55,000 00
166	For money loaned the Receivers to pay rental and taxes of the Utica, Clinton and Binghampton and Rome and Clinton Railroads, bearing interest from January 1, 1874:		
	To the Utica, Clinton and Binghampton Railroad Company, for rental, bearing interest from January 1, 1874...		4,834 76
167	To the Rome and Clinton Railroad Company, for rental, bearing interest from January 1, 1874.....		2,070 00
	To the Utica, Clinton and Binghampton Railroad Company, for rental, bearing interest from June 26, 1874.....		35,000 00
	To the Rome and Clinton Railroad Company, for rental, bearing interest from June 26, 1874.....		125,000 00
			$1,222,351 24

I do further report that the contracts with the Rhode Island Locomotive Works were of the character as shown in the contract, a copy of which is hereto annexed, and that the contract with the Cummings Car Works and the contract with the Tredegar Company were of the character as shown in the contracts, copies of which are hereto annexed. 168

And I do further report that an examination of the receivers' accounts from September 18, 1873, to April 15, 1875, shows the following facts:

The receipts were	$1,847,750 81	169
The expenses were	1,834,451 85	
Leaving a balance of	$13,298 96	

The indebtedness of the receivers on the 15th April, 1875, is as follows:

Notes issued for supplies and other expenses	$107,907 93	
Bills audited for same purpose	49,599 66	
Due to employees	3,504 88	170
Carried over	$161,012 47	
Brought over	$161,012 47	
Due to individuals and companies in open account, for traffic, balances, etc	6,249 13	
Receivers' certificates, issued per detailed statements $1,222,351 24		
Less amount redeemed to date 1,655 88		
	1,220,695 36	171
	$1,387,956 96	

The receivers are also indebted to the Utica, Clinton, and Binghampton Railroad Company for rental, from January 1, 1875, at the rate of $71,000 per year, and to the Rome and Clinton Railroad Company for rental, from same period, at the rate of $26,000 per annum.

There is also assessed against the property in the hands of the receivers, by the cities, villages, and towns through

172 which the road is located, taxes to the amount of $51,208 20, the collection of which is being resisted by the receivers on the ground of illegality.

There is also due the expenses of the receivers for the month of April (the exact amount of which cannot be determined), but is estimated at about $6,000.

There is due to the receivers from, agents, individuals, and companies per account standing on the books, $30,390.36.

This amount is subject to reductions by claims not pre-
173 sented and by amounts due from insolvent companies, estimated at $10,000.

All of which is respectfully submitted.

April 26, 1875.

KENNETH G. WHITE,
Master.

"B."

174 IN THE UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

JOHN G. STEVENS and another

vs.

175 THE N. Y. and OSWEGO MIDLAND RAILROAD COMPANY, and others.

KENNETH G. WHITE, Esq.,
Master in Chancery:

DEAR SIR—In the above-entitled cause will you please find specially the facts, and set them forth in your report on the receivers' accounts, which have been referred to you, showing under exactly what order of the Court

they were issued, giving the date of the order to whom 176
they were issued. You need not give the names of the laborers, but state how many are or were issued to laborers. How many for the purchase of equipment, and to whom they were issued and the reasons why they were issued. If the vendors had, or claimed to have, a lien on any equipment, give a copy of the instrument creating the lien. How many were issued for rent of other railroads, and to whom, and by what order. And for what other purposes, if any, they were issued, and to whom, and by what order, 177

And oblige, yours, etc.,

N. A. COWDREY,

One of the *cestui que trust*, and attorney for others.

March 29, 1878.

This agreement, made this twenty-fifth day of August, eighteen hundred and seventy-three, by and between Rhode Island Locomotive Works of Providence, R. I., party of the first part, and The New York and Oswego Midland Railroad Company, party of the second part, 178
witnesseth that, whereas, the said party of the first part is the owner of three locomotive engines and tenders complete, No. 99, No. 100, and No. 101; and whereas, the said party of the second part is desirous of using and eventually purchasing the same: Now, therefore, in consideration of the sum of one dollar to the said party of the first part, by the said party of the second part, in hand paid, the receipt whereof is hereby acknowledged. And in consideration of the covenants and agreements hereinafter contained, the said party of the first 179
part agrees to let and lease, and hereby does let and lease, to the said party of the second part, and the said party of the second part agrees to have and take from the party of the first part the said three locomotive engines and tenders with the right to place the same upon its railroad and to use the same in the usual manner in transacting the business of the said railroad. And in consideration thereof, the said party of the second part hereby covenants and agrees to pay to the said party of the first part, for

the use and rent of the same, the sum of forty-seven thousand seven hundred and fifty-five dollars and twenty-four cents, in notes, as follows:

3 notes, 6 months, August 25, due February 28, 1874, each $5,218.08	$15,654 24
3 notes, 9 months, August 25, due May 28, 1874, each $5,305.21	15,915 63
3 notes, 12 months, August 25, due August 28, 1874, each $5,395.29	16,185 87
	$47,755 74

And the said party of the second part hereby further covenants and agrees, during the time hereby demised, to keep and maintain the said three locomotive engines and tenders in as good condition as they now are, reasonable and ordinary wear and tear excepted. But it is understood and agreed that any injury by collision, by running off the track, or by fire or destruction, from any cause, is not to be considered reasonable and ordinary wear and tear. And the said party of the first part, in consideration of the foregoing, further covenants and agrees that in case the said party of the second part shall pay the said notes promptly as hereinbefore set forth, upon payment of the last mentioned notes, viz.: sixteen thousand one hundred and eighty-five $\frac{87}{100}$ dollars, it will grant, sell, assign, transfer, and convey to the said party of the second part the said three locomotive engines and tenders in the condition they then are, to have and to hold the same, to the said party of the second part, its legal representatives, successors, and assigns forever.

And the said party of the second part further covenants, and agrees, that if it shall fail to make any of the said payments when due, then the said party of the first part shall be at liberty and it shall be lawful for it to enter upon and take possession of the said three locomotive engines and tenders, and to that end to enter upon the road and other property of the said party of the second part.

And the said party of the second part further covenants

and agrees, that in case of any default on its part in any 184
of the payments, as hereinbefore provided, it will within ten days thereafter, deliver the said three locomotive engines and tenders to the said party of the first part. And the said party of the first part shall thereafter, upon twenty days' written notice to the said party of the second part of the time and place of sale, proceed to sell the said three locomotive engines and tenders, and shall apply the proceeds of such sale—first, to the payment of the expenses of the sale; second, to the payment of any balance then due or thereafter to become due for or on account of the rent 185
as hereinbefore provided; and if after these payments there shall remain any balance of the proceeds of the sale, the same shall be paid to the said party of the second part. And the said party of the second part further covenants and agrees that they will not in an way exercise or claim the right to release encumber, or in way dispose of said three locomotive engines and tenders, or employ them during the term of this lease in any other way than in the service or upon the railroads of the said New York and Oswego Midland Railroad Co., or in any way or manner in- 186
terfere with the said party of the first part in repossessing and retaking said three locomotive engines and tenders should default be made in any of the hereinbefore provided for payments, but the full legal right and title of said three locomotive engines and tenders shall and does remain in the Rhode Island Locomotive Works, as fully to all intents and purposes as though the lease had not been made.

And the said party of the first part hereby covenants and agrees that if the said party of the second part shall 187
and do well and truly make each of the payments aforesaid at the times hereinbefore specified, without any let or hindrance or delay whatever as to any or either of said payments, that upon the last-mentioned payment, viz., sixteen thousand one hundred and eighty-five $\frac{87}{100}$ dollars being made, as well as each and all of the other said payments, the said party of the first part will and shall convey the said three locomotive engines and tenders to the said party of the second part, and give them a full acquittance

for the same, and that the title thereto shall be *ipso facto* by the completion of such payment vested in the said New York and Oswego Midland Railroad Company.

In witness whereof, the parties hereto have hereunto set the corporate seal by the respective officers duly authorized. Executed in duplicate.

New York and Oswego Midland Railroad Company,
By GEORGE OPDYKE,
As President.

Rhode Island Locomotive Works,
EARL P. MASON,
Treasurer.

This agreement, made this twenty-first day of June, eighteen hundred and seventy-three, by and between The Cummings Car Works, a corporation of New Jersey, located at Jersey City, New Jersey, party of the first part, and the New York and Oswego Midland Railroad Company, party of the second part, witneseth, that, whereas, the said party of the first part is the owner of five combination baggage and smoking cars and four baggage cars; and whereas the said party of the second part is desirous of using and eventually purchasing the same. Now, therefore, in consideration of the sum of one dollar to the said party of the first part, by the said party of the second part, in hand paid, the receipt whereof is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained, the said party of the first part agrees to let and lease, and hereby does let and lease, to the said party of the second part, and the said party of the second part agrees to have and take from the said party of the first part the said five combination baggage and smoking cars numbered from 16 to 20 inclusive, and four baggage cars, numbered from 16 to 19, inclusive, and marked as built by the Cummings Car Works, with the right to place the same upon its railroad, and to use the same in the usual manner in transacting the business of the said railroad, and in consideration thereof the said party of the second part hereby covenants and agrees to pay to the

said party of the first part, for the use and rent of the same, the sum of thirty-six thousand two hundred and thirty-eight $\frac{33}{100}$ dollars, in notes, as follows, to wit: 192

Three notes, for the amount of five hundred dollars each, due July 24, 1873.

Five notes, for the amount of one thousand dollars each, due July 24, 1873.

Three notes, for the amount of five hundred dollars each, due October 24, 1873.

Five notes, for the amount of one thousand dollars each, due October 24, 1873. 193

Three notes, for the amount of five hundred dollars each, due January 24, 1874.

Five notes, for the amount of one thousand dollars each, due January 24, 1874.

Three notes, for the amount of five hundred dollars each, due April 24, 1874.

Five notes, for the amount of one thousand dollars each, due April 24, 1874.

One note, for the amount of two thousand three hundred and thirty-one dollars and eighty-six cents each, due July 24, 1873. 194

One note, for the amount of two thousand four hundred and eighty three dollars and sixty-seven cents each, due October 24, 1873.

One note, for the amount of two thousand six hundred and thirty-five dollars and fifty cents each, due January 24, 1874.

One note, for the amount of two thousand seven hundred and eighty seven dollars and thirty cents each, due April 24, 1874. 195

And the said party of the second part hereby further covenants and agrees, during the time hereby demised, to keep and maintain the said cars in as good condition as now, reasonable and ordinary wear and tear excepted. But it is understood and agreed that any injury by collision, by running off the track, or by fire or destruction from any cause, is not to be considered reasonable and ordinary wear and tear. And the said party of the first

196 part, in consideration of the foregoing, further covenants and agrees that in case the said party of the second part shall pay the said notes promptly, as hereinbefore set forth, it will grant, sell, assign, transfer, and convey to the said party of the second part, the said cars, in the condition they then may be, to have and to hold the same to the said party of the second part, its legal representatives, successors, and assigns for ever.

And the said party of the second part further covenants
197 and agrees that if it shall fail to make said payment when due, then the said party of the first part shall be at liberty, and it shall be lawful for it to enter upon and take possession of the said cars, and to that end to enter upon the road and other property of the said party of the second part. And the said party of the second part further covenants and agrees that in case of any default on its part in any of the payments of said notes, it will, within thirty days thereafter, deliver the said cars to the said party of the first part. And the said party of the first part shall
198 thereafter, upon ten days' written notice to the said party of the second part, of the time and place of sale, proceed to sell the said cars, and shall apply the proceeds of such sale—first, to the payment of the expenses of the sale; second, to the payment of any balance then due, or thereafter to become due for or on account of the rent as hereinbefore provided. And, if after these payments, there shall remain any balance of the proceeds of the sale, the same shall be paid to the said party of the second part.

And she said party of the second part further covenants
199 and agrees that they will not, in any way, exercise or claim the right to release, encumber, or in any way dispose of said cars, or employ them during the term of this lease in any other way than in the service or upon the railroad of the said New York and Oswego Midland Railroad Company and its connecting lines, or in any way or manner interfere with the said party of the first part in repossessing and retaking said cars should default be made in any of the hereinbefore provided for payments, but the full legal right and title of said cars shall and does remain

in the party of the first part as fully to all intents and 200
purposes as though the lease had not been made.

And the said party of the first part hereby covenants and agrees that if the said party of the second part shall and do well and truly make each of the payments aforesaid, at the times hereinbefore specified, without any let, or hindrance, or delay whatever, as well as each and all of the other said payments, the said party of the first part will and shall convey the said cars to the said party of the second part, and give them a full acquittance for the same, and that the title thereto shall be *ipso facto*, by the 201
completion of such payment, vested in the said party of the second part, or in such person or corporation as the party of the second part shall, by writing, direct the bill of sale to be made.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

Executed in duplicate.

The words "smoking and" erased before execution.

The Cummings Car Works, 202
N. H. Chaddock.
Witness—John R. Clark,
Treasurer New York and Oswego
Midland R. R. Company,
By G. A. Wicks,
Second Vice-President.

Attest:
Theo. Houston,
Secretary.

203

Articles of agreement made and entered into this first day of August, one thousand eighteen hundred and seventy-two, by and between the Tredegar Company, a corporation of the State of Virginia, party of the first part, and the New York and Oswego Midland Railroad Company, a corporation of the State of New York, party of the second part, witnesseth:

1st. That the party of the first part, in consideration of

196 part, in consideration of the foregoing, further covenants and agrees that in case the said party of the second part shall pay the said notes promptly, as hereinbefore set forth, it will grant, sell, assign, transfer, and convey to the said party of the second part, the said cars, in the condition they then may be, to have and to hold the same to the said party of the second part, its legal representatives, successors, and assigns for ever.

And the said party of the second part further covenants
197 and agrees that if it shall fail to make said payment when due, then the said party of the first part shall be at liberty, and it shall be lawful for it to enter upon and take possession of the said cars, and to that end to enter upon the road and other property of the said party of the second part. And the said party of the second part further covenants and agrees that in case of any default on its part in any of the payments of said notes, it will, within thirty days thereafter, deliver the said cars to the said party of the first part. And the said party of the first part shall
198 thereafter, upon ten days' written notice to the said party of the second part, of the time and place of sale, proceed to sell the said cars, and shall apply the proceeds of such sale—first, to the payment of the expenses of the sale; second, to the payment of any balance then due, or thereafter to become due for or on account of the rent as hereinbefore provided. And, if after these payments, there shall remain any balance of the proceeds of the sale, the same shall be paid to the said party of the second part.

And she said party of the second part further covenants
199 and agrees that they will not, in any way, exercise or claim the right to release, encumber, or in any way dispose of said cars, or employ them during the term of this lease in any other way than in the service or upon the railroad of the said New York and Oswego Midland Railroad Company and its connecting lines, or in any way or manner interfere with the said party of the first part in repossessing and retaking said cars should default be made in any of the hereinbefore provided for payments, but the full legal right and title of said cars shall and does remain

in the party of the first part as fully to all intents and 200
purposes as though the lease had not been made.

And the said party of the first part hereby covenants and agrees that if the said party of the second part shall and do well and truly make each of the payments aforesaid, at the times hereinbefore specified, without any let, or hindrance, or delay whatever, as well as each and all of the other said payments, the said party of the first part will and shall convey the said cars to the said party of the second part, and give them a full acquittance for the same, and that the title thereto shall be *ipso facto*, by the 201
completion of such payment, vested in the said party of the second part, or in such person or corporation as the party of the second part shall, by writing, direct the bill of sale to be made.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

Executed in duplicate.

The words "smoking and" erased before execution.

The Cummings Car Works, 202
N. H. Chaddock.
Witness—John R. Clark,
Treasurer New York and Oswego
Midland R. R. Company,
By G. A. Wicks,
Second Vice-President.

Attest:
Theo. Houston,
Secretary.

203

Articles of agreement made and entered into this first day of August, one thousand eighteen hundred and seventy-two, by and between the Tredegar Company, a corporation of the State of Virginia, party of the first part, and the New York and Oswego Midland Railroad Company, a corporation of the State of New York, party of the second part, witnesseth:

1st. That the party of the first part, in consideration of

the covenants and agreements hereinafter contained, to be kept and performed by the party of the second part, hereby agrees to manufacture, according to the plans and specifications hereto annexed, of first-class material, in a good and workmanlike manner, free from defects, in material and construction, sixteen hundred and seventy box, gondola and flat cars, the proportionate number of each kind to be determined as hereinafter prescribed. All objections to the character and quality of construction and material to be made in each case within thirty days after the arrival of the cars upon the line of the road owned or operated by the party of the second part.

2d. Party of the first part agrees to deliver said cars in lots of not less than ten (10) upon a railroad track in the city of Richmond, Virginia, connecting with a line of railroad, northerly, from said city, and forthwith deposit in the post-office at Richmond, aforesaid, a notice, specifying the number of each kind of cars delivered, directed to the party of the second part at Oswego, New York, or at such other place as the party of the second part shall hereafter, in writing, direct. Each of said cars shall be marked with the letter T, by the party of the first part, before delivering, and numbered, which numbers shall run from 2000 to 3670, both inclusive, representing the successive deliveries.

3d. Party of the first part agrees to deliver forty cars per month, from August first, one thousand eight hundred and seventy-two, to November thirtieth, one thousand eight hundred and seventy-three, thirty cars in the month of December, one thousand eight hundred and seventy-three, and thereafter eighty cars per month until the whole number (sixteen hundred and seventy) of cars shall have been delivered.

4th. Party of the second part agrees to give the party of the first part at least two months' notice, in writing, prior to the first day of each specified month of the proportion of each kind of cars desired by the party of the second part, in such specific month, and the party of the first part agrees to deliver cars as called for by said notices, and should the party of the second part fail to give or

should delay said notices, the party of the first part shall 208
have the right to stop or diminish the deliveries for such month, or to deliver equal proportions of each kind of cars, but in no month shall the party of the first part be required to deliver more than the number specified herein for such month.

5th. It is mutually covenanted and agreed that the party of the first part shall not be liable for delays arising from strikes of its operatives, fires or other accidents to its works.

6th. The party of the first part agrees to lease said cars 209
to the party of the second part, and the party of the second part agrees to pay for the use of said cars for the terms hereinafter provided for as follows:

For the first six hundred and seventy cars delivered—

For each box-car, two hundred and seventy dollars and fifty cents.

For each gondola-car, one hundred and ninety-five dollars.

For each flat-car, one hundred and forty-five dollars. 210

And for the remaining one thousand cars delivered—

For each box-car, two hundred dollars.

For each gondola-car, one hundred and seventy-five dollars.

For each flat-car, one hundred and twenty-five dollars.

Said amounts to be paid in cash, upon delivery of the said cars, as the same shall be delivered from time to time, or, at the option of said railroad company, their promissory notes may at such times be given therefor, duly indorsed by them, payable, as to said six hundred and seventy cars, 211
sixty days after date, and as to said one thousand cars, six months after date, with interest added at the rate of seven per cent. per annum for the time said notes shall have to run; which notes, upon payment thereof at maturity, shall be deemed payment of said rent, the notes to be made payable at the city of New York.

And in addition to the rent reserved herein, the said railroad company agrees to keep each and all of said cars in good repair, and to replace any of said cars which may

be lost or destroyed, or rendered unfit for use by fire or any other accident or casualty.

And this lease shall expire for the various deliveries as follows:

For the first four hundred cars delivered three hundred and seventy-five days after the delivery of eight hundred cars shall have been fully made.

For the two hundred cars following the first four hundred delivered three hundred and seventy-five days after the delivery of twelve hundred shall have been fully made.

And for the remainder of said deliveries three hundred and seventy-five days after the delivery of the full number of sixteen hundred and seventy cars shall have been made.

And upon the happening of either of the defaults hereinafter named, and such default having continued fifteen days after written notice thereof from the party of the first part to the party of the second part, said lease may at the option of the party of the first part be terminated by written notice thereof from the party of the first part to the party of the second part, said option to be exercised within sixty days after the expiration of said fifteen days, and further deliveries shall thereupon cease, viz.:

1. If the party of the second part shall, for thirty days after receiving notice of any delivery under this instrument, fail to pay the cash or deliver the notes for the use or rent thereof as called for by this agreement.

2. In case the party of the second part shall, for fifteen days after the maturity thereof, fail to pay any note which shall have been given for rent or use under the lease.

3. And whereas, the parties hereto have entered into an agreement of purchase and sale, covering the property mentioned herein, of even date herewith, it is expressly agreed that in case the party of the second part shall, for fifteen days after the maturity thereof, continue in default upon any of the obligations assumed, and of the payments agreed to be made under said agreement, for the purchase of said property, and such default shall continue fifteen days after notice thereof from the party of the first part

to the party of the second part, the term of this lease shall, at the option of the party of the first part, terminate. 216

All payments shall be applied to outstanding obligations, in payment thereof, according to priority or maturity.

And no deduction from the amount of rent reserved herein, shall be made by reason of the time being shortened on account of the happening of any one of the events hereinbefore described, and numbered from 1 to 3, inclusive, and any promissory note or notes given for use or rent under this instrument shall thereupon mature and become immediately payable, a deduction of interest being made for the time which said note or notes shall have been run. 217

And upon the termination of this lease, the party of the second part shall redeliver said cars, or their said substitutes, to the party of the first part in the State of New York or New Jersey (the cars then under lease), which last-named company shall have the right to enter in and upon the premises of said railroad company, and, without resorting to legal proceedings, to take and remove said property or any part thereof. 218

In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Know all men by these presents:

That the Tredegar Company, a corporation under the Laws of the State of Virginia, party of the first part, and the New York and Oswego Midland Railroad Company, a corporation under the laws of the State of New York, party of the second part, have entered into the following agreement: 219

The party of the first part hereby agrees to sell, and the party of the second part hereby agrees to purchase, the following described property, viz.:

Certain box, gondola and flat cars, to the number of sixteen hundred and seventy, said cars being under lease to the party of the second part by an instrument of even date herewith.

Delivery of said cars to be made to the party of the

second part in their then condition, or if destroyed or replaced by the party of the second part upon the expiration of said lease, without default on the part of the party of the second part, at which time a bill of sale of said property shall be executed and delivered to said railroad company by the party of the first part. But said sale is expressly conditioned upon the faithful performance, by the party of the second part, of the obligations assumed under this agreement.

And said Railroad Company hereby agrees to pay therefor as follows:

For the first six hundred and seventy cars delivered under said lease—

For each car five hundred and forty-seven dollars.

And for the remaining one thousand cars delivered—

For each box-car, six hundred and seven dollars and fifty cents.

For each gondola or flat car, five hundred and sixty-seven dollars.

Said amounts to be paid in cash upon the delivery of said cars under said lease, as the same shall be delivered from time to time or at the option of the party of the second part, their promissory notes may at such times be given therefor, payable to their own order and duly endorsed in blank by them in the various amounts and payable at the times hereinafter specified, with interest added at the rate of seven per cent. per annum for the times each of said notes may respectively have to run—payment of which notes at maturity shall constitute payment of the installments of purchase money they respectively represent. The notes to be made payable at the City of New York. Said notes to be in the amounts and payable at the times hereinafter designated, as follows:

For the first six hundred and seventy cars delivered under said lease—

For each car two hundred and seventy-three dollars and fifty cents in six months from date. Two hundred and seventy-three dollars and fifty cents in nine months.

And for the remaining one thousand cars delivered under said lease—

For each box car, sixty-nine dollars and sixteen cents in 224
six months from date. Two hundred and sixty-nine dollars and seventeen cents in nine months from date. Two hundred and sixty-nine dollars and seventeen cents in twelve months from date.

For each gondola car, seventy-two dollars and thirty-three cents in six months from date. Two hundred and forty-seven dollars and thirty-three cents in nine months from date. Two hundred and forty-seven dollars and thirty-four cents in twelve months from date.

For each flat car, one hundred and five dollars and sixty- 225
seven cents in six months from date. Two hundred and thirty dollars and sixty-seven cents in nine months from date. Two hundred and thirty dollars and sixty-six cents in twelve months from date.

But if at any time before said lease shall expire it shall be terminated by the exercise on the part of the Tredegar Company, or of the option therein contained to terminate the same upon the happening of certain events therein specified, or if the party of the second part shall for fifteen days after the maturity 226
thereof fail to pay any obligation under this agreement, and after notice of such default for fifteen days, fail to discharge the same, no delivery of cars then under lease shall thereafter take place under this agreement except as hereinafter specified, and all notes given herein shall immediately mature, a deduction of interest being made for the time such notes shall have to run.

And from the amount which shall have been paid under this agreement for cars still under lease shall be reserved by the party of the first part— 227

First—Sufficient to cover all outstanding obligations for rent which shall be appropriated to the payment thereof.

Second—A sum equal to the expenses which the party of the first part shall incur in taking possession of, keeping, transporting, repairing or selling said cars, including labor, storage, insurance, and reasonable counsel fees, together with all other reasonable expenses in and about said matter, shall be reserved therefrom and appropriated to the payment thereof.

228 Third—Fifty dollars per car for each car not then delivered under said lease shall be reserved thereof, and be held by the party of the first part until actual damages for cars undelivered under said lease shall be determined and paid, such fifty dollars per car to be deposited by said party of the first part, to their own credit, in some banking institution in the city of New York, and notice thereof sent by mail to the party of the second part. And the balance of said moneys remaining after said deductions shall be held by the party of the first part until the
229 market value of the cars then under lease shall have been determined, and the difference between such market value and the contract price shall have been paid. And the same shall be ascertained in the following manner: The party of the first part shall make sale of said cars at public auction at some point within either the State of New York or New Jersey, such sale to occur within ninety days after the party of the first part shall have obtained actual possession of said cars, unless restrained by process of court, and fifteen days' notice of the time and
230 place of such sale shall be given to the party of the second part. Said sale to be made by and under the direction of some person mutually agreed upon by the parties hereto, or, in case of their disagreement, by some person to be designated by the President of the Chamber of Commerce, New York.

And, when sufficient shall have been realized from such sale, so that the same, together with the balance last mentioned of the money paid by the party of the second part, under this instrument, shall equal the full contract price
231 of the cars then under lease, the sale shall cease, and the cars unsold shall be delivered to the party of the second part.

And should a sale take place, under the provisions of this contract, in adjusting the amount to be paid by the party of the second part, aside from the items numbered second and third above, the party of the second part shall be charged the rent and purchase price, and credited with the amounts paid for rent and purchase price.

And, if the amount realized from the sale of all the

cars then delivered shall not suffice to make such payments, the deficiency shall be made up by the party of the second part. 232

In witness whereof, the parties to these presents have hereunto set their hands and seals, this first day of August, in the year one thousand eight hundred and seventy-two.

233

Upon the coming in of the report, a motion to confirm the same, and for the discharge of the receiver, Hewitt, was made in due form, upon notice to the various parties, as appears from the papers on file, of which the following are copies, viz.:

UNITED STATES CIRCUIT COURT, 234

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

Between ABRAM S. HEWITT, Trustee,
Complainant,

and 235

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, and others,
Defendants.

236

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

Between JOHN G. STEVENS, ABRAM S. HEWITT and CHARLES W.
237 OPDYKE, Trustees,

Complainants,

and

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, and others,

Defendants.

238

Please to take notice, that the report of Kenneth G. White, Esq., Master, to whom it was referred to take and pass the accounts of Abram S. Hewitt and John G. Stevens, as receivers in the above-entitled cause, was filed in the office of the Clerk of this Court on the 29th day of April, 1875, and that a motion will be made before the Circuit Court of the United States, at the court-rooms thereof, No. 41 Chambers street, in the City of New York,
239 on the 15th day of May, 1875, at eleven o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order confirming said report and discharging Abram S. Hewitt as such receiver, and cancelling his and his sureties' bonds.

Dated April 29, 1875.

ASHBEL GREEN,
Counsel for the receivers of the New York and Oswego Midland Railroad.

UNITED STATES OF AMERICA, Southern District of New York. } ss: 240

JOHN REMERS, being duly sworn, says, that on the 29th day of April, 1875, he served the annexed notice upon George H. Carpenter, Liberty, Sullivan County, New York; C. Carstaden, Oneida, Madison County, N. Y.; Churchill S. Nutting, Oswego, Oswego County, N. Y.; Dilland Royce, Middletown, Orange County, N. Y.; D. L. Follett, Norwich, Chenango County, N. Y.; M. Goodrich, Dryden, Tompkins County, N. Y.; B. Law, Middletown, Orange County, N. Y.; A. W. Mills, Clinton, 241
Oneida County, N. Y.; D. D. McKoon, Middletown, Orange County, N. Y.; Kivens and Thompson, Monticello, N. Y.; W. A. Poucher, Oswego, N. Y.; O. S. Williams, Clinton, Oneida County, N. Y.; A. V. A. Powelson, Middletown, Orange County, N. Y.; B. H. Taylor, Fulton, Oswego County, N. Y.; by enclosing copies thereof in respective envelopes, addressed to each of them respectively at their respective places of business, as indicated after their names herein, paying the postage upon each, and depositing each of said notices, so addressed, in the 242
General Post Office, in the city of New York. That there is a regular daily communication by mail between the city of New York and each of said places to which said envelopes were addressed. That on the said 29th day of April, 1875, he served said notice upon John S. Lawrence and C. C. Leeds, by leaving a copy thereof at their respective offices in the city of New York, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, and that on the 30th day of April, 1875, he served said notice upon N. A. Cowdrey, at his office in the city of 243
New York, by delivering to, and leaving with him a copy thereof addressed to him as Bondholder and Attorney for other bondholders.

(Signed) JOHN REMERS.

Sworn to, before me this 15th day of May, 1875. }

(Signed.) JOSEPH GUTMAN, JR.,
United States Commissioner.

[U. S. Commissioner's Seal.]

244 UNITED STATES OF AMERICA, Southern District of New York. } ss.:

FRANCIS LYON, being duly sworn, says, that on the 29th day of April, 1875, he served the annexed notice upon Abbot & Wilds, G. H. Fletcher, Miller, Peet & Opdyke, McDaniel, Lummis & Souther, by leaving a copy thereof at their respective offices, in the City of New York, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day.

245 (Signed) FRANCIS LYON.

Sworn to before me, this 15th day of May, 1875,

(Signed) JOHN A. SHIELDS,
[SEAL.] U. S. Commissioner,
S. D. of New York.

After hearing such motion, the following direction was given by the Court, "The report may be confirmed but
246 "at present I think no further order should be entered." Neither to this direction nor to the report which was filed April 29, 1875, have any exceptions ever been taken or filed.

Thereafter, on the 30th day of June, 1875, the petitioners, excepting John E. Williams and Theodore Houston, became parties defendant to the suit, under an order of the Court which is set forth in the petition at folios 239–
247 243.

Thereafter, on the 8th day of July, 1875, the petitioners, John E. Williams and Theodore Houston, became parties defendant to the said suit, under an order of the Court of which the following is a copy:

At a Stated Term of the Circuit Court of the 248
United States, for the Southern District
of New York, held at the Court Rooms
thereof, on the day of ,
1875.

Present—Hon. SAMUEL BLATCHFORD, *J.*

JOHN G. STEVENS *et al.*, Trustees, etc., 249

vs. In Equity.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD CO. *et al.*

On reading and filing the petition of John E. Williams and Theodore Houston, and after hearing Mr. Julien T. Davies, of counsel for the petitioners, and Mr. Ashbel Green for the plaintiffs, and Mr. W. S. Opdyke for the 250
defendant, the New York and Oswego Midland Railway Company:

It is ordered, that the said petitioners have leave, and leave is hereby granted to them, to intervene in this suit for their own interest and the interest of those whom they represent, and to that end to appear in the suit within three days, as defendants in the same manner, and with like effect as if they were named in the original and supplemental bills, as defendants, having or claiming an interest: Provided, that said petitioners all appear by the same 251
solicitor or solicitors, this order to be without prejudice to proceedings already had, but this is not to be construed as depriving the petitioners of leave to apply for a rehearing or review of any order heretofore made, upon due notice to the parties interested, and leave is given to the plaintiffs to amend the bill by bringing in such further or other parties defendant as they may be advised, and nothing herein contained shall be considered as authorizing the said defendants to answer the original or supplemental bill

252 unless such authority shall be given upon special application to the court.

SAMUEL BLATCHFORD.

Subsequently, a motion was made by the complainants, which came before the Court on the 13th day of July, 1875, for a final decree, at which time a proposed form of decree was presented by the counsel for the complainants, and various amendments were submitted by other parties to the action, and the Court ordered that the hearing be
253 adjourned until August 4, 1875, with a direction to the solicitors for the complainants that the proposed form of decree and the proposed amendments, should be printed and the final hearing set down for the 4th of August, 1875, without further notice.

The decree proposed by the complainants was substantially the same as that finally entered herein and contained the following provisions:

"It is further ordered and decreed, that the said mort-
254 "gaged premises shall not be sold at said sale for a less "sum than four millions of dollars, in lawful money of "the United States, and that, of the whole purchase "money, not less than one hundred thousand dollars shall "be paid in cash at the time of the sale, and that, at the "time of the delivery of the deed, so much of the total "purchase money, so far as the same may go, shall be paid "in cash, as shall be necessary to pay and discharge the "certificates issued, and to be issued, by the receivers of "the said railroad, heretofore appointed in this cause, with
255 "the interest accrued and to accrue thereon, together with "all other obligations, liabilities, or indebtedness of the "said receivers."

The sixth paragraph of the proposed decree provided that the said Master "after retaining from the proceeds "of the sale hereby directed to be made, the amount of "his own fees and expenses in executing this decree," etc., "shall forthwith pay out of the said net proceeds of said "sale as follows, viz." The first provision was for the Court costs. The next was for the unpaid taxes. The

next provided as follows: "The said Master shall then 256
"next pay and discharge to the several holders thereof,
"all the certificates issued by the receivers in this cause
"under the orders to the Court herein, with the accrued
"interest thereon, and also all obligations, liabilities, and
"indebtedness of the said receiver."

Upon the 4th day of August, 1875, the final hearing was adjourned until the 15th of September, 1875, and the Court made an order whereby a reference was made to Kenneth G. White, one of the Masters, in the following terms, viz.:

It is further ordered, that it be and it is hereby referred 257
to Kenneth G. White, Esq., one of the Masters of this Court, to compute, ascertain and report to the Court, on or before the eleventh day of September, 1875, what would be a reasonable allowance to the plaintiffs, for their services, expenses and outlay in the execution of the trust created by said mortgage or deed of trust, including counsel fees and legal expenses incurred by them and not yet paid also, what liabilities have been lawfully and necessarily incurred by the Receivers in the execution of their 258
trusts or office from which they have not yet been discharged, including the liability of any surety upon any bond given in legal proceedings, begun or prosecuted under their directions; also the amount of certificates of indebtedness and notes issued by said Receivers under the authority of the Court, classifying them so as to show the dates of and authority for their issue and the purpose of such issues respectively, and to whom issued by the Receivers, and the aggregate amount of principal due thereon, with interest computed to September fifteenth, 259
1875; also what judgments have been recovered against said mortgagor for rights of way or in ejectment, and what suits are pending against said mortgagor or said Receivers for rights of way or claims arising out of rights of way; also, the amount of taxes and assessments imposed upon the mortgaged property up to the date of his report; also the rolling stock and equipments and other property except land, in the possession or use of said mortgagor or the Receivers; also what leases have

260 been made to the mortgagor or the Receivers, and the dates and terms thereof: also what rents have accrued under the terms of such leases, and have not been paid; also the amounts of any unpaid claims of any of the employees of the said Receivers, and of all others for labor or for supplies furnished for the operation of the railroad; also the amount and character of all other obligations of the said Receivers; also to tax the costs of any party to this cause who may deem himself entitled to costs and may apply for such taxation; and it is fur-
261 ther ordered that the hearing of the petition of the Receivers as to the leases of the Utica, Clinton, and Binghampton and Rome and Clinton Railroad be reserved until the said fifteenth day of September, 1875.

(Signed) SAMUEL BLATCHFORD.

(A copy.) KENNETH G. WHITE, Clerk.

The time for the taking of proof before the Master having been extended, by order of the Court, from time to time, the Master on the 13th day of November, 1875,
262 made and filed his report, in which among other things he reported as follows, (certain matters immaterial to said petition being omitted:)

U. S. CIRCUIT COURT.

JOHN G. STEVENS et al.,
Complainants,

263 *and*

THE N. Y. AND OSWEGO MIDLAND RAILROAD CO.,
Defendants.

To the Honorable the Circuit Court of the United States for the Southern District of New York:

I, the Master named in the order made in this cause, August 4, 1875, respectfully report as follows:

I have been attended by Mr. Green, Mr. Williams, Mr. 264
Opdyke, Mr. Mills, and Mr. Bangs, counsel respectively for the parties, plaintiff and defendant, and have heard their allegations and proofs, and thereupon I certify as follows:

1. I have not inquired under the first clause of said order of reference what would be a reasonable allowance to the plaintiffs for their services, expenses and outlay therein referred to, no claim having been made, nor any evidence produced before me on that subject; the plaintiffs stating that they desired to make a further applica- 265
tion to the Court on that subject, and not waiving in the cause their claim to such allowance.

2. I have inquired what liabilities have been lawfully and necessarily incurred by the receivers in the trust, or office from which they have not yet been discharged, except that for the reason aforesaid I have not inquired into their liabilities to counsel, attorneys or solicitors, for professional services or disbursements. And I find and certify that the amount of the liabilities of the receivers (except as aforesaid), up to the 6th day of September, 266
1875, with interest calculated on the receivers' notes and certificates up to the 15th day of September, 1875, is $1,630,787.65, the details being as follows:

New York & Oswego Midland R. R. Co. Receivers' indebtedness, September 6th, 1875:

Notes outstanding for supplies and other expenses, September 6th, issued per order of Dec. 23d, 1873, and April 8th, 1875	$113,666 68	
Interest to September 15th, 1875	2,875 53	
		$116,542 21
Bills audited and due for supplies and other expenses, September 6th, 1875		37,542 81
Due employees to September 6th, 1875		3,647 44
Due individuals and companies in open account		7,620 20
Receivers' certificate issued to September 6th, 1875, per detailed statement annexed.	$1,270,896 64	
Interest to September 15th, 1875	129,014 51	
		1,399,911 15
Taxes and assessments		44,315 55
Due Utica, Clinton & Binghampton R. R. Co. on lease to September 15th, 1875		15,291 65
Due Rome and Clinton R. R. Co. on lease to September 15th, 1875		5,916 64
		$1,630,787 65

267

268 (Here follows a statement of the parties to whom receivers' notes were issued:)

New York and Oswego Midland R. R. Co., statement of Receivers' Certificates issued to September 6th, 1875:

1874.				
Jan. 6.	Tredegar Company	$234,000 00		
Feb. 19.	" "	302 98		
				$234,302 98
	For vendors' liens on—			
	50 Box cars.			
	200 Flat cars.			
	150 Gondola cars.			
269 Jan. 12.	Columbian Iron and Mf'g Co.	$48,000 00		
" 20.	" " "	10,695 06		
				58,695 06
	For vendors' liens on 100 Gondola cars—			
Jan. 23.	Cummings Car Works	$17,000 00		
" 28.	" "	1,000 00		
Feb. 9.	" "	5,000 00		
" 20.	" "	23,883 23		
				46,883 23
	For vendors' liens on—			
	4 Baggage cars, 5 Smoking and Mail cars	$36,238 33		
270	2 Baggage Mail and Express, 1 Milk car, 4 Caboose cars, 20 Dump " , 2 Gondola " , 1 Passenger "	10,644 90		
Feb. 10.	Rhode Island Locomotive Works	$171,000 00		
" 19.	" " "	292 00		
				$171,292 00
	For vendors' liens on 11 Locomotives—			
Feb. 10.	George Opdyke & Co	$20,000 00		
" 11.	Naylor & Co	20,000 00		
" 14.	Perkins, Livingston & Post	10,000 00		
" 19.	Williams & Guion	5,000 00		
				226,292 00
271	(For money loaned the Receivers, and used to pay past due rental and taxes of the Utica, Clinton, & Binghampton and Rome & Clinton Railroads.)			
June 1.	Utica, Clinton & Binghampton R. R. Co			4,834 76
" 1.	Rome & Clinton R. R. Co			2,070 00
	For past due rental and organization expenses			573,078 03
	Interest on foregoing certificates from January 1st, 1874, to September 15th, 1875			68,530 58
Sept 16.	Utica, Clinton, & Binghampton R. R. Co.	$35,000 00		
" 16.	Rome & Clinton R. R. Co	12,500 00		
	For rental due June 26th, 1874, interest from June 26th, 1874, to September 5th, 1875	4,073 13		
				51,573 13

Dec. 30.	Utica, Clinton & Binghampton R. R. Co.	$35,000 00		272
" 30.	Rome & Clinton R. R. Co.	12,500 00		
	For rental due Dec. 26th, 1874:			
1875.				
Feb. 15.	Utica, Clinton & Binghampton R. R. Co.	1,000 00		
	Rome & Clinton R. R. Co.	1,000 00		
	For organization expenses due Jan. 15th, 1875, interest from Jan. 1, 1875, to Sept. 15, 1875	2,454 37		
			51,954 37	
June 26.	Utica, Clinton & Binghampton R. R. Co.	$35,000 00		
	Rome & Clinton R. R. Co.	12,500 00		
	For rental due June 26th, 1875, interest from June 26th, 1875, to Sept. 15th, 1875	748 13		273
			48,248 13	
Feb. 1, '74.	To employees of the N. Y. & O. M. R. R. Co., for services between Jan. 1st, 1873, and September 18th, 1873		408,019 76	
Sept. 6, '75.	Interest from January 13th, 1874, to September 15th, 1875		47,840 34	
Mar. 6, '75.	To employees of Receivers, for services		145,298 85	
Sept. 6, '75.	To interest from March 6th, 1875, to September 15th, 1875		5,367 96	
	Grand total		$1,399,911 15	
	Certificates	$1,270,896 64		
	Interest	129,014 51		

274

All the foregoing certificates were issued under the orders of November 18th, 1873, and December 23d, 1873; January 13th, 1874; March 6th, 1875; and June 24th, 1875. The reasons for their issue are set forth in the petitions and orders.

9. The following statement shows the amounts of all unpaid claims of the employees of the receivers and all others for labor and supplies furnished for the operation of the railroad up to September 6, 1875, not provided for by the issue of receivers' certificates: 275

Notes outstanding for supplies and other expenses, September 6, issued per order of December 23, 1873, and April 8, 1875	$113,666 68	
Interest to September 15, 1875	2,875 53	
		$116,542 21
Bills audited and due for supplies and other expenses, September 6, 1875		37,542 81
Due employees to September 6, 1875		3,647 44
Due individuals and companies in open account.		7,620 20
		$165,352 66

276 which amount is included in the aggregate of the receivers' indebtedness, stated at $1,630,787.65 in the second clause of this report.

10. Under that clause of the said order of August 4, 1875, which directs me to ascertain and report the amount and character of all other obligations of the said receivers, I have considered a claim made by the Rome & Clinton Railroad Company for damages and depreciation of leased property, and have taken proofs concerning the same, and after hearing counsel in support of and in
277 opposition to said claim, I have allowed the same at $27,319.20, and I have after like hearing also considered a similar claim made by the Utica, Clinton & Binghampton Railroad Company, and have allowed the same at $122,364.95, the detailed statement whereof is as follows:

AMOUNTS ALLOWED TO THE UTICA, CLINTON & BINGHAMPTON R. R. CO.

278 *Rent and Organization Expenses.*

1.—Amount of rent accrued and unpaid from July 1, 1875, to Oct. 20, 1875, 3⅔ months	$7,638 89
(See Lease, Art. 4.)	
2.—Amount of organization expenses accrued and unpaid from Jan. 1, 1875, to Oct. 20, 1875, 9⅔ months	805 56
279 (See Lease, Art. 3.) Total of rent and organization expenses	8,444 45

(See Lease, Art. 3.)

Note.—The lease shows the annual rent and organization expenses, and the testimony of O. S. Williams shows the several dates, since which no payments have been made.

Depreciation of Railway, etc. 280

3.—Amount on roadway—

Iron	$1,674 75
Ties	2,800 00
Total depression of roadway, etc.	$4,474 75

Note—The lease (article 5) sets out the obligation to maintain the property in good repair, and the amount required to put it in proper condition is shown by the testimony of C. W. Wenby. 281

Additions to the Rolling Stock.

4.—Amount on rolling stock added to equipment of the road and necessary to its operation—

Locomotive No. 80, valued at	$8,000 00
Coach No. 26, valued at	4,800 00
Baggage car No. 168, valued at	1,600 00
	$14,400 00

282

And I report that the claimant is entitled to the rolling stock above claimed, or its value in money as above stated, together with such number of box, platform and coal cars as the business of the road reasonably requires.

Note—The lease contemplates additions to the rolling stock as a part of the necessary equipment of the road, and the testimony of W. H. Griggs shows that the foregoing additions have been made and are necessary for the operation of the road. 283

Summary.

Amount allowed for rent and organization—

Expenses	$8,444 45
Expenses—For depreciation, etc	4,474 75
Expenses—For rolling stock	14,400 20
	$27,319 20

284 Amounts allowed to the Utica. Clinton, and Binghampton Railroad Companies. Rent and organization expenses—

1.—To amount of rent accrued and unpaid, from July 1, 1875, to October 20, 1875, $3\frac{2}{3}$ months	$21,388	89
(See Lease, Art. 4.)		
2.—Amount of organization expenses accrued and unpaid, from January 1, 1875, to October 20, 1875, $9\frac{2}{3}$ months	805	56
285 Total of rent and organization expenses	$22,194	45

(See Lease, Art. 3.)

Note—The lease shows the annual rent and organization expenses, and the testimony of O. S. Williams shows the several dates since which no payments have been made.

Depreciation of Roadway Structures, Rolling Stock, etc.

286 3.—Amount on roadway and structures, iron		$14,940	00
Ties and spikes		14,243	30
Bridges and other structures		7,387	20
		$36,570	50
4.—Amount on rolling stock, etc., Locomotive No. 65	$1,000		
" " 66	800		
" " 67	2,000		
287 Dummy engine and passenger car	2,300		
Dummy engine	4,500		
Two passenger coaches, side-seated	2,500		
Engine house at New Hartford, with contents	1,000		
		$14,100	00
Total of depreciation of roadway, etc.		$50,670	50

Note.—The lease (art. 6.) sets out the obligation to maintain the property in good repair, etc. And the amount required to put it in proper condition is shown by the testimony of C. W. Wentz, W. H. Griggs, Jas. McLoughlin and Wm. H. Schuyler. 288

It is understood that the remaining rolling stock and the tools and furniture delivered, or their proper equivalent, will be returned in good order, if a surrender of the road should be ordered by the court, and therefore no report is made upon that branch of the claim. 289

Additions to the Rolling Stock.

5.—Amount of rolling stock added to equipment of the road, and necessary for its operation.

Locomotive No. 22, valued at		$7,000 00
" " 49, "		8,000 00
" " 63, "		8,000 00
" " 82, "		8,000 00
		$31,000 00
Coach No. 36, valued at.....	$6,000	
" " 33, "	5,000	
" "102, "	2,500	
" "107, "	3,300	
" "163, "	1,700	
		18,500 00
		$49,500 00

290

And I report that the claimant is entitled to the rolling stock above described, or its value in money, as above stated, together with such number of box, platform, and coal cars as the business of the road reasonably requires. 291

Note.—The lease contemplates additions to the rolling stock as a part of the necessary equipment of the road. And the testimony of W. H. Griggs shows that the foregoing additions have been made, and are necessary for the operation of the road.

292

Summary.

Amount allowed for rent and organization expenses	$22,194 45
Amount allowed for depreciation, etc.	50,670 50
Amount allowed for additional rolling stock.	49,500 00
Total	$122,464 95

11. No party in this cause has applied to me to tax his
293 costs.

12. My minutes of the proceedings before me are hereto annexed.

All of which is respectfully submitted.

Dated November 13, 1875.

KENNETH G. WHITE,
Master.

294

That in the proceedings before Kenneth G. White, as Master, pursuant to the order of this Court, testimony was taken which was upon the second day of October, 1875, by the said Master filed in the office of the Clerk of this Court, and that from such testimony it appears that one of the petitioners, Nathaniel A. Cowdrey, was examined before said Master on the 21st day of September, 1875, and testified amongst other things, as follows:

295 Question: How long have you been the owner of any first mortgage bonds?

Answer: I think about a year.

That thereafter, but not until the 5th day of January, 1876, being more than thirty days after the filing of said report, the petitioners made and filed exceptions to the Master's report, of which the following is a copy:

U. S. CIRCUIT COURT. 296

JOHN G. STEVENS and others

vs.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD and others.

297

The exceptions of Conrad N. Jordan, Frederick P. James, Theodore Houston, John E. Williams, Edward Livingston, Henry Amy, John P. Crosby, to the report of Kenneth G. White, master, dated November 13th, 1875.

The said defendants except to the said report, as follows:

For that the said master has reported that the receivers' certificates, issued to September 6, 1875, per detailed statement annexed, amounting, with interest to September 15, 1875, to one million three hundred and ninety-nine 298
thousand nine hundred and eleven dollars and fifteen cents, constitute a part of the indebtedness of the receivers.

Second—For that the said master, in the fourth paragraph of his report, has certified and reported that the certificates therein mentioned constitute a part of the indebtedness of the receivers, or constitute a lien upon the mortgaged property.

Third—For that the said master has allowed the claim made by the Rome and Clinton Railroad Company for damages and depreciation of leased property. 299

Fourth—For that the said master has allowed the said claim of the Rome and Clinton Railroad Company, at one hundred and twenty-two thousand three hundred and sixty-four dollars and ninety-five cents; whereas the said master should have wholly disallowed the said claim.

Fifth—For that the said master has allowed the claim of the Utica, Clinton and Binghampton Railroad Company at twenty-seven thousand three hundred and nineteen dollars and twenty cents; whereas the said master should

300 have wholly disallowed the said claim of the Utica, Clinton and Binghampton Railroad Company.

Sixth—For that the said master has allowed the claim of the Utica, Clinton and Binghampton Railroad Company for damages and depreciation of leased property.

Seventh—For that the said master has reported and decided that the Utica, Clinton and Binghampton Railroad Company is entitled to the rolling stock in the said report described, or its value in money, as therein stated.

Eighth—For that the said master has reported that the
301 said The Utica, Clinton and Binghampton Railroad Company is entitled to such number of box, platform, and coal cars as the business of the road reasonably requires.

Ninth—For that the said master has allowed to the Utica, Clinton and Binghampton Railroad Company the sum of twenty-one thousand three hundred and eighty-eight dollars and sixty-nine cents, for amount of rent accrued and unpaid from July 1st, 1875, to October 20, 1875; whereas the said master should not have allowed any sum for such rent.

202

Tenth—For that the said master has allowed to the Utica, Clinton and Binghampton Railroad Company the sum of eight hundred and five dollars and fifty-six cents, the amount of the organization expense accrued and unpaid from January 1, 1875, to October 20, 1875; whereas the said master should not have allowed to the said Utica, Clinton and Binghampton Railroad Company any sum whatever for such organization expenses.

Eleventh—For that the said master has allowed to the
303 said The Utica, Clinton and Binghampton Railroad Company the sum of fourteen thousand nine hundred and forty dollars for amount of depreciation on roadways and structures—iron—and the further sum of fourteen thousand two hundred and forty-three dollars and thirty cents for depreciation of ties and appliances; and the sum of seven thousand three hundred and eighty-seven dollars and twenty cents for depreciation of bridges and other structures; whereas the said master should not have allowed any or either of the said last-mentioned sums.

Twelfth—For that the said master has allowed to the 304
said The Utica, Clinton and Binghampton Railroad Company one thousand dollars for depreciation of locomotive No. 65, and eight hundred dollars for depreciation of locomotive No. 66, and two thousand dollars for locomotive No. 67, and two thousand three hundred dollars for depreciation on dummy engine and passenger car, and four thousand five hundred dollars for depreciation on dummy engine, and two thousand five hundred dollars for depreciation on two passenger coaches, side seated, and one thousand dollars for depreciation on engine-house at New 305
Hartford, with contents; whereas the said master should not have allowed any or either of the said last-mentioned sums.

Thirteenth—For that the said master has allowed seven thousand dollars for the value of locomotive No. 22, and eight thousand dollars for the value of locomotive No. 49, and eight thousand dollars for the value of locomotive No. 63, and eight thousand dollars for the value of locomotive No. 82, and six thousand dollars for the value of coach No. 36, and five thousand dollars for the value of coach No. 33, 306
and two thousand five hundred dollars for the value of coach No. 102, and three thousand three hundred dollars for the value of coach No. 107, and one thousand seven hundred dollars for the value of coach No. 163; whereas the said Master should not have allowed the last mentioned sums.

Fourteenth—For that the said Master has allowed to the Rome and Clinton Railroad Company the sum of seven thousand six hundred and thirty-eight dollars and eighty-nine cents for amount of rent accrued and unpaid from 307
July 1, 1875, to October 20, 1875; whereas the said Master should not have allowed any part of such sum for such rent.

Fifteenth—For that the said Master has allowed to the Rome & Clinton Railroad Company the sum of eight hundred and five dollars and fifty-six cents for amount of organization expenses accrued and unpaid from January 1, 1875, to October 20, 1875; whereas the said Master

308 should not have allowed any part of the same for said organization expenses.

Sixteenth—For that the said Master has allowed to the Rome & Clinton Railroad Company the sum of one thousand six hundred and seventy-four dollars and seventy-five cents for depreciation of roadway iron and the sum of two thousand eight hundred dollars for depreciation of ties; whereas the said Master should not have allowed any or either of the said last mentioned sums for depreciation.

Seventeenth—For that the said Master has allowed to
309 the said Rome & Clinton Railroad Company eight thousand dollars for the value of locomotive No. 80, and four thousand eight hundred dollars for the value of coach No. 26, and one thousand six hundred dollars for the value of baggage car No. 168; whereas the said Master should have wholly disallowed each and every of the said last mentioned sums.

Eighteenth—For that the said Master has reported and decided that the Rome & Clinton Railroad Company is entitled to the rolling stock in that behalf mentioned in
310 his said report, or its value in money.

Nineteenth—For that the said Master has reported and decided that the said The Rome and Clinton Railroad Company is entitled to such number of box, platform, and coal cars as the business of the road reasonably requires.

Twentieth—For that the said report of the said Master is, in other respects, informal, uncertain, insufficient, and erroneous.

C. W. Bangs,
Solicitor for Def'ts excepting.

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F. N. Bangs,
Of Counsel for Def'ts excepting.

The following is a copy of the plaintiffs bill in the action.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK. 1

To the Honorable, the Judges of the Circuit Court of the United States, for the Southern District of New York, in the second circuit sitting in Equity.

Humbly complaining, shows unto your Honors, your orators Abram S. Hewitt, John G. Stevens, and Charles W. Opdyke, Trustees as hereinafter mentioned, residents of the State of New Jersey, and citizens of the said State of New Jersey, who bring this their bill of complaint against the New York and Oswego Midland Railroad Company, a corporation, created and existing under, and by virtue of, the laws of the State of New York, and having its principal office for the transaction of its business in the City of New York; Delos De Wolf, Trustee, and William H. Macy, Trustee, who 2
are residents and citizens of the State of New York; and the Mercantile Trust Company, Trustee, a corporation created by and existing under and by virtue of the laws of the State of New York, and having its office for the transaction of its business in the City of New York.

3 And thereupon your orators complain and say: that under and in pursuance of the laws of the State of New York, the New York and Oswego Midland Railroad Company, on or about the eleventh day of January, eighteen hundred and sixty-six, became, by the filing of the requisite certificate and affidavits in due form of law, and ever since has been, a body politic and corporate by that name and style, with all the powers, rights, privileges, franchises, and immunities mentioned in, and granted by, the laws of the State of New York, to corporations formed under the said laws
4 for the construction, operation, and maintenance of railroads in said State, and more particularly as are mentioned in and granted by an Act of the Legislature of the State of New York, passed April 2, 1850, entitled, "An "Act to authorize the formation of Railroad Companies, and to regulate the "same," and the several acts of the said Legislature, passed supplementary to, and amendatory of, the said Act, and that the said company from time to time became possessed of, and now possess, all the powers, rights, and privileges, franchises and immunities, mentioned in and granted by sundry acts of the Legislature of the State of New York, entitled as follows:

5 "An Act to facilitate the construction of the New York and Oswego Midland Railroad, and to authorize towns to subscribe to the capital stock thereof." Passed April 5th, 1866.

"An Act to facilitate the construction of the New York and Oswego Midland Railroad, and to exempt from taxation town and city bonds used in the construction thereof." Passed May 15th, 1867.

"An Act to facilitate the construction of the New York and Oswego Midland Railroad, and to amend the several acts in relation thereto." Passed March 26th, 1868.

6 "An Act to facilitate the construction of the New York and Oswego Midland Railroad, and to amend the several acts in relation thereto." Passed March 31st, 1869.

"An Act to authorize the New York and Oswego Midland Railroad Company to extend its road, and to facilitate the construction thereof." Passed April 5th, 1871.

"An Act to authorize the New York and Oswego Midland Railroad Company to consolidate with other companies, and for other purposes." Passed May 19th, 1870.

7 And which acts your orators pray may be taken and received as part of this their bill of complaint.

And your orators further show unto your honors, that the said New York and Oswego Midland Railroad Company, on or about the eleventh day of January, one thousand, eight hundred and sixty-six, and at other times prior to the date of the mortgage hereinafter mentioned, in which your orators are Trustees, became and is now possessed of the power, right, privilege, and franchise of constructing and maintaining and using certain railroads in the State of New York, more particularly described in the mortgage or deed of

trust, hereinafter referred to, and that the said company has its office and principal place of business in the City of New York, in the State of New York, and as your orators are advised and believe, the said corporation is a citizen of the State of New York, within the meaning of the constitution and the laws of the United States relating to the jurisdiction of this Honorable Court. 8

And your orators further show unto your Honors that the said company, after its organization, commenced the construction of its said railroads and branches mentioned in said mortgage, and has continued said work, and has put in operation the said railroad and, among others, branches as follows: the main line of road of said company extending from the City of Oswego, upon Lake Ontario, through the Counties of Oswego, Oneida, Madison, Chenango, Otsego, Delaware, Sullivan, and Orange, to Middletown, in the said County of Orange, being about two hundred and forty-five miles of road; the Cortland branch, from Cortland, in the County of Cortland, by way of Truxton and De Ruyter, to the aforesaid main line, being about forty-seven and one-half miles of road; the New Berlin branch, from New Berlin, in the County of Chenango, to the aforesaid main line, being about twenty-two and a half miles of road; the Delhi branch, from Delhi, in the County of Delaware, to the aforesaid main line, being about sixteen and one-half miles; the Monticello branch, from Monticello, in the County of Sullivan, to the aforesaid main line, being about six miles of road; the Kingston and Ellenville branch, from Ellenville to the aforesaid main line, being about eight miles of road, being a distance of about three hundred and forty-five miles, in the State of New York. 9 10

And your orators further show unto your Honors, that the said New York and Oswego Midland Railroad Company, on or about the first day of July, eighteen hundred and sixty-nine, made its certain bonds to the amount of eight millions of dollars, the payment whereof was secured by a first mortgage on the road and its several branches, equipments, and all appurtenances thereto, franchises and other property in the State of New York, executed in trust, for the benefit of the holders of these bonds, to Abiel A. Low, George Opdyke and Delos De Wolf, Trustees. 11

And your orators further show unto your Honors, that on or before the first day of July, 1869, the board of directors of said company, in pursuance of the power and authority in them by law vested, adopted resolutions to make the trust deed or mortgage known as its first mortgage to the said Abiel A. Low, George Opdyke, and Delos De Wolf, Trustees, and to issue bonds secured thereby, as hereinafter mentioned. And your orators further show unto your honors, that afterwards, and on or about the first day of July, eighteen hundred and sixty-nine, the said New York and Oswego Midland Railroad Company made its certain trust deed of that date, in the nature of a mortgage between the said company as party of the first part, and Abiel A. Low, of the City of New York, George Opdyke, of the City of 12

13 New York, and Delos De Wolf, of the City of Oswego, as parties of the second part, and which deed was duly sealed with the corporate or common seal of the said company, and subscribed by the president and treasurer of the said company, and duly acknowledged the same, and delivered it unto your orators, a copy of which deed of trust or mortgage is hereto annexed, and marked Schedule A, and which mortgage your orators pray may be taken and received as a part of this their bill of complaint.

And your orators further show unto your Honors, that the said mortgage was duly recorded in the several counties of the State of New York, in
14 which the property covered by said mortgage is situated, prior to the first day of August, eighteen hundred and sixty-nine.

And your orators further show unto your Honors, that the said New York and Oswego Midland Railroad Company made its several negotiable bonds in the forms mentioned in the said trust deed or mortgage, and sealed the same with the common or corporate seal of the said company, and caused the names of its president and treasurer to be thereto affixed, each of which bonds was for the payment of the principal sum of money therein mentioned, in United States gold coin at par, to the holder of the said bond,
15 twenty-five years from the date thereof, with interest thereon from date, at the rate of seven per cent. per annum, payable semi-annually in gold coin, as aforesaid, free of all United States Government tax, on the first days of January and July in each year, upon presentation of the respective coupons thereunto annexed.

And your orators further show unto your Honors, that interest warrants, or coupons for the payment of said interest, at the times above mentioned, were annexed to each of said bonds; and that the said bonds amounted in the aggregate to eight millions of dollars.

16 And your orators further show unto your Honors, that all of said bonds, which by the provisions of the said bonds were not to become valid or obligatory until authenticated by certificate endorsed thereon, and duly signed by Abiel A. Low, George Opdyke, and Delos De Wolf, as such trustees, were afterwards and on or about the date thereof, authenticated by a certificate endorsed thereon and duly signed by Abiel A. Low, George Opdyke, and Delos De Wolf, as such trustees.

And your orators further show unto your Honors, that the said New York and Oswego Midland Railroad Company at divers times sold, issued,
17 and delivered the said bonds, secured by the said mortgage or deed of trust to a great number of individuals, partnership firms, and corporate bodies, who thereupon and thereby became the holders and bearers of the said bonds, and entitled to the moneys therein mentioned and agreed to be paid, and that the said bonds so made, sold, issued, and delivered, amounted in the aggregate to the sum of eight millions of dollars of principal money, or thereabouts, and no more; and that they have come by transfer and delivery into the hands of a large number of persons, some of whom are unknown to your orators and are too numerous to be made parties to this action.

And your orators further show unto your Honors, that on the first day 18
of July, 1873, the said New York and Oswego Midland Railroad Company utterly failed and made default in the payment of the interest, interest warrants, or coupons which became due on that day, and that the said company has never paid the whole or any part of the said moneys which, according to the tenor and effect of the said bonds, and of the said interest warrants or coupons, should have been paid on those days and ever since the said first day of July, 1873, the amount of interest in arrear and unpaid on said bonds has been the sum of one hundred and fifty thousand dollars and upwards. 19

And your orators further show unto your Honors, that default in this payment of interest warrants or coupons, which had been attached to said bonds, and representing interest upon the said bonds becoming due upon the first day of July, 1873, representing in the aggregate the sum of one hundred thousand dollars and upwards, was made on or before the 10th day of July, 1873, and has continued for the space of four months and upwards; and that, by force and effect of the said first mortgage or deed of trust, the whole amount of the principal and interest secured thereby became due and payable on the eleventh day of November, 1873. 20

And your orators further show unto your Honors, that Abiel A. Low, George Opdyke, and Delos De Wolf, trustees under the said mortgage, heretofore resigned their positions as trustees under the said first mortgage; their resignations were duly accepted, and that your orators were thereupon duly elected and appointed trustees in their place and stead, under the said first mortgage, in pursuance of the provisions thereof.

And your orators further show to your Honors, that on the first day of May, 1871, the said New York and Oswego Midland Railroad Company executed a second certain mortgage or deed of trust to your orator, Abram 21
S. Hewitt, as trustee, a copy of which mortgage or deed of trust is hereto annexed, and marked Schedule B, and which mortgage or deed of trust your orators pray may be taken and received as a part of their bill of complaint; that, on the twentieth day of June, 1872, the said New York and Oswego Midland Railroad Company executed a third certain mortgage or deed of trust to Abiel A. Low, George Opdyke, and Delos De Wolf, as trustees, a copy of which mortgage or deed of trust is hereunto annexed and marked Schedule C, and which mortgage or deed of trust your orators pray may be taken and received as a part of this their bill of complaint; that of these 22
three trustees, so created, Abiel A. Low and George Opdyke resigned their positions as trustees under the said mortgage, whose resignations were duly accepted, and that William H. Macy and your orator, Charles W. Opdyke, were duly selected and appointed as trustees in their place and stead; that on the twentieth day of September, 1872, the said New York and Oswego Midland Railroad Company executed a fourth certain mortgage or deed of trust to Delos De Wolf, as trustee, and which mortgage or deed of trust is

hereto annexed and marked Schedule D, and which mortgage or deed of trust your orators pray may be taken and received as a part of this their bill of complaint; that on the first day of September, 1873, the said New York and Oswego Midland Railroad Company executed another mortgage, called the Consolidated Mortgage, to the Mercantile Trust Company as trustee, and which consolidated mortgage is hereunto annexed and marked Schedule E, and which consolidated mortgage your orators pray may be taken and received as a part of this their bill of complaint; that under these four indentures of mortgage last above described, the bondholders secured thereby respectively, and their trustees respectively, have, or claim to have some interest in or lien upon the mortgaged premises, or some portion thereof, which interest or lien, if any, has accrued subsequently to the lien of the said first mortgage, in which your orators are trustees.

And your orators further show unto your Honors, that your orators 28
claim that by the force and effect of the said first mortgage or deed of trust, bearing date the first day of July, eighteen hundred and sixty-nine, all of the property of the said defendant, The New York and Oswego Midland Railroad Company, described in the said first mortgage, is subject to the lien of said first mortgage, prior to any lien or claim under any other of the mortgages herein mentioned.

And your orators further show unto your Honors, that no proceedings at law have been had, nor any suit or action commenced by or on behalf of your orators, or any holder of any of the bonds of the said company, secured 29
by the first mortgage aforesaid, in which your orators are trustees, or any or either of them, for any interest unpaid or accrued thereon, except only this action.

In consideration whereof, and for as much as your orators are remediless in the premises, at and by the strict rules of the common law, and are only relievable in a Court of Equity, where matters of this kind are properly cognizable and relievable.

Your orators, therefore, pray that the aid of this honorable Court, and that the said first mortgage or deed of trust in which your orators are 30
trustees, may be decreed to be a first lien upon all the property, railroads, branches, extensions and leased lines of the said New York and Oswego Midland Railroad Company, described in the said mortgage or deed of trust, and that the said New York and Oswego Midland Railroad Company may be decreed to pay unto your orators, as trustees, under the said first mortgage, the principal and interest due and payable upon the said bonds, together with the costs, commissions, and expenses, and charges in this behalf incurred and expended; and, in default thereof, the said defendants above named, and all persons claiming and to claim under them or either of 31
them, may be for ever barred and foreclosed of and from all equity of redemption and claim of, in, and to the said mortgaged premises, and every part and parcel thereof, and may deliver over to your orators the deeds, demises, and writings relating to and concerning the same, and that all and singular the said mortgaged premises, including all railroads, branches, extensions, leased lines, appurtenances, property, effects, rights, immunities, and franchises of the said New York and Oswego Midland Railroad Company may be sold under a decree of this honorable Court, and that out of the money arising from the sale thereof, your orators, or the holders of the 32
said bonds, secured by their said mortgage, may be paid the principal and interest due thereon, and all interest money to become due thereon, together with the commission and expenses and all costs and charges by them, in this behalf sustained; and that an account may be taken of the bonds secured by the said mortgage to your orators, and of the amount due on said bonds for principal and interest, or either, and that the names of the lawful holders thereof may be ascertained, and that your orators, as trustees,

as aforesaid, may be let into the possession of the said railroad and its branches, and the income, tolls, and profits of the same, and also of the depots and machine shops, station houses and other real estate, and all rolling stock, equipments and appurtenances connected with or forming part of the said railroad and branches, and also all other property included in and covered by the said mortgage; and as to the several persons above named, who are properly parties to this bill of complaint, and who are not citizens of the State of New York, and who may be out of the jurisdiction of this Court, your orators pray that process may be issued to make them parties, if they shall come within such jurisdiction.

And your orators further pray that a receiver may be appointed according to the course and practice of this court, with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, effects, moneys, receipts, and earnings, rights, privileges, franchises and immunities of the said railroad company, and of all other property included in, and covered by, the said mortgage.

And your orators further pray that a writ of injunction, issuing out of this, and under the seal of this Honorable Court, or issued by one of your Honors, according to the form of the statue in such case made and provided, directing, commanding, enjoining and restraining the said defendants, and each and every one of them, from interfering with, transferring, selling, or disposing of any of the property mentioned in or covered by the said mortgage, or from taking possession of, levying upon, or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgage to your orators, and that your orators may have such further or other relief in the premises as the nature of the circumstances of this case may require and to this Honorable Court shall seem meet.

And may it please your Honors to grant unto your orators a writ of injunction, issuing out of and under the seal of this Honorable Court, or issued by one of your Honors, according to the form of the statute in such cases made and provided, directing, commanding, enjoining, and restraining the said defendants, and each and every one of them, from interfering with, transferring, selling, or disposing of any of the property mentioned in or covered by the said mortgage, or from taking possession of, levying upon, or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgage to your orators.

And may it please your Honors to grant unto your orators a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the New York and Oswego Midland Railroad Company, Delos De Wolf, Trustee, William H. Macy, Trustee, The Mercantile Trust Company, Trustee,

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the defendants respectively, therein and thereby commanding them on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer all and singular the premises, and to stand to, perform, and abide by the said order, direction, and decree as may be made against them in the premises, as shall seem meet and agreeable to equity and good conscience.

And your orators, as in duty bound, will ever pray, etc. 40

ALEXANDER & GREEN,
Solicitors of Complainants.

ASHBEL GREEN,
Of Counsel.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } *ss.*

Abram S. Hewitt, John G. Stevens, and Charles W. Opdyke, being 41
duly sworn, each for himself, doth depose and say: That he is the complainant in the foregoing bill named, and has read the same, and knows the contents thereof, and that the said bill is true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

ABRAM S. HEWITT,
J. G. STEVENS,
C. W. OPDYKE.

Sworn to before me this twelfth day of November, 1873.

WM. C. GULLIVER,
Notary Public 121,
New York County.

SCHEDULE A.

THIS INDENTURE, made the first day of July, in the year one thousand eight hundred and sixty-nine, between the New York and Oswego Midland Railroad Company, a Corporation, duly incorporated under and pursuant to the laws of the State of New York, and residing in said State, party of the first part, and Abiel A. Low, of the City of Brooklyn, George Opdyke, of the City of New York, and Delos De Wolf, of the City of Oswego, and State aforesaid, as Trustees, parties of the second part:

WHEREAS, The New York and Oswego Midland Railroad Company, in pursuance of the power conferred upon it by the Act of the Legislature of the State of New York, entitled, "An Act to authorize the formation of Railroad Corporations, and to regulate the same," passed April 2d, 1850, and by virtue of the laws under which said Company was organized: And, in pursuance of the powers conferred by Chapter Three Hundred and Ninety-eight of the laws of 1866, entitled, "An Act to facilitate the construction of the New York and Oswego Midland Railroad, and to authorize towns to subscribe to the capital stock thereof," and, by Chapter Nine Hundred and Seventeen of the laws of 1867, entitled, "An Act to facilitate the construction of the New York and Oswego Midland Railroad, and to exempt from certain taxation town and city bonds used in the construction thereof," and the several Acts amendatory of said Acts, are now engaged in constructing a railway from the city of Oswego, upon Lake Ontario, in the State of New York, through the Counties of Oswego, Oneida, Madison, Cayuga, Onondaga, Cortland, Chenango, Otsego, Delaware, Sullivan, Ulster and Orange, to the State line of the State of New Jersey, (thence to be continued through the State of New Jersey to the City of New York,) together with several branch railways authorized by law:

AND, WHEREAS, the said Company, party hereto of the first part, has a reliable stock subscription of about the sum of six millions of dollars, and of this amount has, in the prosecution of the objects aforesaid and in the construction of its said road, expended about the sum of three and one-half millions of dollars, and have remaining on hand about two and one-half millions of dollars, which is now being expended in the construction of said railways, and now desires to obtain the money and materials necessary to complete the construction and operation of its said railways and branches aforesaid, and to that end, has, by its Board of Directors, entrusted with the control and management of its corporate affairs, *Resolved* to borrow money to an amount not exceeding twenty thousand dollars per mile in length of the track of its said railway, and amounting in the aggregate to a sum not exceeding eight millions of dollars, and to issue bonds for the repayment thereof, which bonds are to be of the amount and denomination severally of ($1,000) one thousand dollars each, and are to stand equally secured, accord-

ing to their amount, by these presents, and are to be of the following form 47
of bond and coupon, to wit:

[BOND.]

The NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, of the State of New York, promises to pay to George Opdyke, or to the holder of this bond, twenty-five years from the date hereof, for value received, the sum of One Thousand Dollars in United States gold coin, at par, at its agency in the City of New York, and also the interest thereon from date, at the rate of seven per cent. per annum, payable semi-annually in gold 48
coin, as aforesaid, free of all United States government tax, on the first days of January and July in each year, upon presentation of the respective coupons hereunto annexed.

This bond is one of a series of eight thousand non-convertible bonds of one thousand dollars each, numbered from number one to number eight thousand, inclusive, amounting in the aggregate to eight millions of dollars, all bearing even date herewith, the payment whereof is secured by a first mortgage on the road and its several branches, equipments and all appurtenances thereto, franchises and other property in the State of New York, 49
executed in trust for the benefit of the holders of these bonds, to Abiel A. Low, George Opdyke and Delos De Wolf, bearing date the first day of July, 1869.

This bond shall pass by delivery, or by transfer on the books of the Company in the City of New York, and at any other place which the Company may determine. After a registration of ownership, certified hereon by the Transfer Agent of the Company, no transfer except upon the books of the Company shall be valid, unless the last transfer be to bearer, which shall restore transferability by delivery, but this bond shall continue sub- 50
ject to successive registrations and transfers to bearer, as aforesaid, at the option of each holder. On a registration of ownership, the holder may, at his option, surrender the coupons, which will then be cancelled, and thereafter interest will be payable to the registered holder, or his attorney.

IN WITNESS WHEREOF, the said Company has caused its Corporate Seal to be hereunto affixed, and these presents to be signed by its President, and attested by its Treasurer, this first day of July, 1869.

[Attest.] *Treasurer.* *President.* 51

[CERTIFICATE.]

This is to certify, that the New York and Oswego Midland Railroad Company has executed to us a mortgage, or deed of trust, dated the first day of July, 1869, (which is, by reference, made part of the certificate,) purporting to convey its railroad and its several branches, built and to be built, from the City of Oswego, to the State line of New Jersey, with all equip-

ments and appurtenances thereof, and its franchises and all other property in the State of New York, now owned and hereafter to be acquired, in trust, for the benefit of the holders of its bonds, of similar tenor or date with the foregoing, in sums of one thousand dollars each, issued and to be issued, pursuant to a resolution of the Board of Directors of said Company, passed the third day of June, 1869, to the amount of eight millions of dollars, with power to take possession of said railroad, equipments, appurtenances and franchises, and to use or sell the same in case of default for the space of four months in the payment of the interest on any of said bonds, (in case of which default it is provided that the principal of said bonds shall also become due and payable,) and that the same are to be issued at the rate of $20,000 per mile, so fast as the track of said railway is placed in running order, and no faster: and that the foregoing is one of the several bonds described in, and secured by said deed of trust, or mortgage, and that the said mortgage, or deed of trust, has been duly stamped and recorded in every County through which the said railroad, or any of its several branches, have been, or are to be constructed.

Trustees.

$35. [COUPON.]

The New York and Oswego Midland Railroad Company will pay the bearer Thirty-five Dollars, in gold coin, at is Agency in the City of New York, on the first day of 18 , for six months' interest on first mortgage bond No. —

Treasurer.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the said party of the first part, for the purpose of securing and making more sure and certain the payment of the sums of money mentioned and provided for in the said bonds, bearing even date herewith, and each and every of them, with the interest thereon, accruing after actual issue, according to the true intent and meaning thereof, and in consideration of the recited premises, the loan of said money, and the sum of one dollar to the said party of the first part, in hand paid by the said parties of the second part, at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged by the said party of the first part, the New York and Oswego Midland Railroad Company, the party of the first part aforesaid, HAS granted, bargained, sold, assigned, transferred and conveyed, and by these presents, DOES grant, bargain, sell, assign, transfer and convey unto the said Abiel A. Low, George Opdyke and Delos De Wolf, as trustees, the parties of the second part aforesaid, and to the survivors and the survivor of them, and to their successor and successors in the trust, and to their assigns, all and singular the estate and property, real, personal and mixed, and all and singular the railroads or railways of said Company, and each and all of its several branches and

proposed branches, now in process of construction, or hereafter to be constructed, in the State of New York, TOGETHER with all and singular the lands, tracks, lines, rails, purchased, or to be purchased, bridges, viaducts, culverts, ways, rights of way, and materials, buildings, ferries and ferry-boats, piers, wharves, erections, fences, walls, fixtures, privileges, easements, rights under leases, terms and parts of terms, agreements, covenants and contracts of all and every kind, franchises, rights and interests, real estate, personal property, choses in action, leasehold and other things, of and belonging to the said party of the first part, of every kind, nature and character whatsoever in the said State of New York; and all railway stations and depots, engine houses and machine shops, with all the appurtenances necessary or convenient for the sole, complete and entire use and operation, as well as maintenance of the said roads, or railways, owned or leased by the said party of the first part; AND ALSO all the locomotives, engines, tenders, cars of every kind, carriages, rolling stock, materials, tools and machinery, now owned or hereafter to be acquired by, or belonging, or appertaining to, said railroad and railways, and connected with the proper equipment, operation and conduct of the same. All of which personal chattels are hereby declared and agreed to be fixtures and appurtenances of the said railroad, and are to be used and sold therewith, and not seperate therefrom, and are to be taken as a part thereof. AND ALL tolls, incomes, issues and profits, to be had or derived from the same, or any part or portion thereof, or from any part or portion of said term or terms, or either thereof, and all right to receive, or recover the same.

AND TOGETHER with all improvements or additions made, or to be made to any or all of said properties, estates, railroads, or railways, and their appurtenances by said party of the first part, or by others. AND ALSO, all and every other estate, interest, property, or thing, which the said party of the first part owns and holds, or may and shall hereafter acquire and hold, necessary or convenient for the use occupation, operation and enjoyment of all or any of its said railroads, railways, leases and property, rights, privileges and franchises, or any part or portion thereof. AND ALSO, all rights and privileges to use the said road-beds, tracks, sidings, turnouts and switches, constructed at the execution of these presents, or which may and shall be hereafter constructed, for the convenient use of said railroads, railways and branches, or any of them, owned or operated by the said party of the first part, as fully and as effectually as the said Company, the party hereto of the first part, is or may be, by law, entitled to have or acquire. But nothing herein contained shall be held, understood or construed, to prevent said party of the first part from selling, hypothecating, or otherwise disposing of anything received in payment of shares of capital stock, or on and for other interests; or from disposing of, by and with the consent, in writing, of the parties of the second part, any lands or other property and effects, not essential or necessary to be retained

62 for the said roadways, depots or station grounds, nor required for the construction, or convenient use of the said railways, nor from selling shares, nor from collecting moneys due on capital stock, subscriptions or otherwise or for other things: provided the said first party shall diligently proceed to apply all such means and proceeds to the constructing, finishing, repairing and equipping of said railway, and to the laying and construction of a double track for the same, whenever such double track shall, by them, be deemed necessary for the interests of said Railway Company, and to other like necessary purposes thereof; nor from receiving and using the income from
63 the earnings of said railway: provided, also, that no default shall have been made, and at the time remain in the payment of the interest or principal of any of the bonds hereby secured. But even after default in the payment of interest, the trustees shall have full power, in their discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the persons designated by the said party of the first part, any lands acquired or held, for the purposes of stations, depots, shops or other buildings; and shall, also, have power to convey, as aforesaid, on like request, any lands or property, which, in the judgment of the
64 trustees, shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel or other material; and also to convey, as aforesaid, on like request, any lands not occupied by the track, which may become disused by reason of a change of the location of any station house, depot, shop or other building, connected with the said railroad; and such lands occupied by the track and adjacent to such station-house, depot, shop or other buildings as the said party of the first part may deem it expedient to disuse or abandon, by reason of such change, and to consent to any such change, and to such other changes in the location of the track
65 or depot, or other buildings as shall have become expedient; and to make and deliver the conveyances necessary to carry the same into effect; but any lands which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the trustees, upon the trusts of these presents; and the trustees shall, also, have full power to allow the said party of the first part, from time to time, to dispose of such portions of the equipments, machinery and implements at any time held or acquired, for the use of the said railroad, as may have become unfit for such use, replacing the same by new, which shall be conveyed to the trustees, or be otherwise
66 made subject to the operation of these presents. TO HAVE AND TO HOLD the estate, property, rights, privileges, franchises and interests of the said party of the first part, together with all and singular the emoluments, income and advantages, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, unto the said Abiel A. Low, George Opdyke and Delos De Wolf, parties of the second part, their survivor or survivors, and their successors or successor,

and assigns, on the trusts and for the uses and purposes herein declared, and none other. PROVIDED ALWAYS that these presents are made and executed upon the express condition that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of the said bonds or obligations, intended to be secured hereby, and each and every of them, after the same shall be issued, the principal sums of money therein respectively mentioned, at the maturity thereof, according to their true intent and meaning, with the interest thereon accruing, at the time, and in the way and manner, therein provided, according to the true intent and meaning of these presents, that then and from thenceforth, this Indenture and the estate hereby granted shall cease, determine and be utterly void and of non-effect, without any other release or formal re-conveyance, re-entry, acknowledgment of satisfaction, or any other act whatsoever. 67 68

AND the said party of the first part, in consideration of the premises, hereby covenants and agrees, to and with the said Abiel A. Low, George Opdyke, and Delos De Wolf, their survivors or survivor, successor and successors, in said trust and assigns, that the said party of the first part will, at any time or times hereafter, upon the reasonable request of the said parties of the second part, their successors or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and reasonable deeds, conveyances, assignments and assurances, in the law, for the better and more effectual vesting and confirming the premises hereby granted, or intended so to be, and especially for conveying any property, subsequently to the date hereof, acquired by the said party of the first part, and comprehended in the description contained in these premises, if any such there be, which shall not inure to the use and benefit of the holders of said bonds, under the terms and covenants of this indenture, to the said parties of the second part, their survivors or survivor, successors and assigns, as by them or their counsel learned in the law, shall be reasonably devised, advised or required, for the better effectuating of the objects and purposes of these presents; AND FURTHER, that the said party of the first part will do and perform all the things on the part of the said first party to be done and performed, as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue of said bonds, in good faith, to the construction of the said railroad and branches, and to putting the same into operation, and to the purposes hereinbefore recited or mentioned, as the objects thereof; AND FURTHER, that the said first party will pay unto the holder or holders of the said bonds respectively, the said principal sums of money, therein respectively mentioned, and as expressed therein, and the interest thereon, as the same shall become due and payable: AND FURTHER, that in case of default in the payment of the interest on any day on which the same becomes due and payable, and such default continuing for a period of four months, that then, that is after the expiration of the said four months, the whole amount of principal and interest of the bonds hereby 69 70 71

72 secured, shall be deemed to become, and shall be due and payable, and the said party of the first part shall and will, on demand made by the parties of the second part, their survivors or survivor, their successors or assigns, trustee or trustees, for the time being, or their agent or agents, duly authorized in writing, assign and transfer in due form to them, or to their agent or agents so authorized, the actual possession of all the herein granted and conveyed property and premises, and herein recited and mentioned, or intended to be embraced in this trust; AND FURTHER, that the expense of taking, holding and managing said property and premises, if possession be
73 taken, shall be paid from the income, and if necessary, from the sale of the property and premises, by the said trustee or trustees, as the case may be, for the time being; AND FURTHER, that in such case the parties of the second part, their successors in said trust, and assigns shall and may by themselves, or their officers and agents, take and receive, collect and have the income and profits of the said railways and other property, first applying the same to the payment and discharge of all current necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges; and next to the payment of all sums of
74 money due and payable upon the aforesaid bonds issued by said party of the first part, and hereby secured, according to the tenor thereof; AND FURTHER, that the said parties of the second part, their successors in said trust, or assigns, having entered, as hereinbefore mentioned, into the full possession of the premises, property and estate hereby conveyed (the said default still continuing), at his or their discretion, and with the approbation of the Supreme Court of said State may, or on the written request of the holders of at least twenty per centum of the bonds hereby secured, and then outstanding unpaid, shall proceed to sell and dispose of, or cause to be sold and
75 disposed of, all of the premises, property, and estate hereby conveyed. or intended to be conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest, according to the tenor thereof, of all of such of said bonds hereby secured and then outstanding, as may have been issued by the said first party, and which then remain unpaid, together with all benefit and equity of redemption of said party of the first part therein, by public auction, in the city of New York, to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the specific property to be sold, by publishing the same in at
76 least two newspapers, of good general circulation, in said city, and wherever else the trustees may deem expedient or required by law, for a period of at least ninety days previous to such sale; and as the attorney or attorneys of the said first party, for that purpose, by these presents, duly constituted and appointed, make, execute, and deliver to the purchaser, or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to said purchaser or purchasers, all such estate, right, property and interest, and to the same extent as the said first party

had therein at the date hereof, or at any time subsequent, and also a good 77
and sufficient transfer and assignment of said personal property, choses in action, contracts and leases, and out of the moneys arising from such sale or sales, to retain the cost and charges of advertisement of the said sale of the premises, and all other sums of money which said trustees or their successors in said trust may have been obliged to pay by reason of their taking possession of and operating said premises, and a reasonable allowance for their own services, and for legal professional advice, aid and assistance, in effecting and consummating said possession, operation and sale; and also the principal and interest which shall then remain due 78
and unpaid on said bonds remaining issued and outstanding, and hereby secured as aforesaid for the benefit of, and to be paid to, the holders thereof, and then restore the residue of the said proceeds to the said party of the first part, it being hereby expressly understood that the bonds issued by said first party, and secured by these presents, shall be ratably received in payment of said sale, by said trustees, or their successors, in case any such sale shall be made, at the option of the holder or holders, thereof; and the said sale, when fully consummated, shall be a perpetual bar, both in law and in equity, against the said party of the first part and all persons 79
claiming or to claim the premises, or any part thereof, by, through, or under said party of the first part, subsequent to the date of these presents.

AND THIS INDENTURE FURTHER WITNESSETH, that these presents and the said bonds hereby secured, or intended to be, are made, executed, and issued or delivered upon the terms, conditions, and agreements following, that is to say:

First.—That the actual possession, use, management, and control of all the hereinbefore granted estate, property, and premises, shall be and 80
remain in and with the said party of the first part, so long as the bonds so issued shall be and remain without default or forfeiture.

Second.—That the said bonds shall be countersigned by the said parties of the second part, and shall be issued and offered and exposed for sale, only to such an amount as shall be at and after the rate of twenty thousand dollars ($20,000) in bonds, per mile, in length of the track of said railway and its several branches, and the said bonds shall be so issued, and the avails thereof shall be paid over to said party of 81
the first part, at the rate aforesaid, per mile, so fast as the track of said road shall be graded, the rails laid thereon, and the same placed in running order, and no faster.

Third.—That in the case of any vacancy in the said trusteeship, by the incapacity to act, death or resignation of either of the said trustees, or from any other cause, all his estate, right, interest, power and

82 control, shall be thereupon divested, and cease and determine, but without destroying, or without any discontinuance of, the trust, and the said company, party of the first part, and the surviving trustees, parties of the second part, shall select a new trustee to fill the vacancy thereby created, and, in case of disagreement between said company and the said trustees, the holders of not less than twenty per centum in amount of the said bonds hereby secured, may apply to the Supreme Court of said State, to appoint a new trustee or trustees, to supply the vacancy, and such proceedings may be had, and
83 appointments and selections made, as often as the like occasion may require the appointment of a trustee to execute the trust herein declared; and when so selected, such new trustee shall thereupon become vested for the purpose of the said trust with all the estate, rights, interests, power, property, and control, hereby conveyed, or granted to, or vested in the said Abiel A. Low, George Opdyke and Delos De Wolf, by these presents, without any further assurance, grant, or conveyance of the same, as fully and effectually as if such appointment had been originally made herein. But if the same
84 shall be necessary, both the said party of the first part, and such new trustee, or either of them, shall make, execute, and deliver all necessary conveyance and agreements and grants and powers and authorities for that purpose.

AND IT IS FURTHER understood and agreed by and between the parties to these presents, that the said parties of the second part, their successor or successors in said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of
85 each other to which they do not severally assent, nor for the acts or negligencies of any agent or agents necessarily employed by them, when such agent or agents are selected with proper discretion, or with the approbation of the said party of the first part. And the officers of the said railroad company shall have, at all times, the right to inspect the books kept by the receivers of the road and their agents.

AND THIS INDENTURE FURTHER WITNESSETH, that the said parties of the second part hereby accept the aforesaid trusts, and also covenant and
86 agree to and with the said party of the first part, to execute the same, upon the terms and conditions hereinbefore, as well as hereinafter mentioned and provided, and which said terms and conditions are hereby mutually agreed to and upon by both of the parties to these presents.

IN TESTIMONY WHEREOF, the said party of the first part, in pursuance of authority given by law, and in conformity with the order of the Board of Directors, has caused this Indenture to

be signed by De Witt C. Littlejohn, its President, and Walter M. Conkey, its Treasurer, and the corporate seal of the company to be affixed thereto, and the parties of the second part have hereunto subscribed their names and affixed their seals the day and year first in this Indenture written. 87

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY,

By

[COMPANY SEAL.]

DE WITT C. LITTLEJOHN, *President*, 88
WALTER M. CONKEY, *Treasurer*,
A. A. LOW, [L. S.]
GEORGE OPDYKE, [L. S.] } *Trustees*,
DELOS DE WOLF, [L. S.]

$8.000
U.S. Int. Rev. Stamps, affixed and cancelled.

Signed, sealed, stamped, and delivered in presence of

HEZEKIAH WATKINS.

89

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.*:

On this first day of July, one thousand eight hundred and sixty-nine, before me, the undersigned, personally came DeWitt C. Littlejohn, the President, and Walter M. Conkey, the Treasurer, of the New York and Oswego Midland Railroad Company, of the State of New York, with each of whom I am personally acquainted, who, being by me severally and duly sworn, doth each for himself severally depose and say: that the said De Witt C. Littlejohn resides at Buffalo, in the County of Erie; that he is the President 90 of the New York and Oswego Midland Railroad Company; that the said Walter M. Conkey resides at Norwich, in the County of Chenango; that he is the Treasurer of the New York and Oswego Midland Railroad Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was thereto affixed by order of the Board of Directors of said Company; that the said De Witt C. Littlejohn signed his name thereto by the like order, as President, and that the said Walter M. Conkey signed his name thereto by the like order, as Treasurer of said Company.

91

And on the same day also, personally appeared before me, Abiel A. Low, George Opdyke and Delos De Wolf, to me severally known to be the same persons described in, and who executed the foregoing instrument, and severally acknowledged that they had severally executed the same for the purposes therein mentioned.

HEZEKIAH WATKINS,

[NOTARY SEAL.] *Notary Public in and for said City and County.*

92 STATE OF NEW YORK, } ss:
CITY AND COUNTY OF NEW YORK, }

I, Charles E. Loew, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, do hereby certify that Hezekiah Watkins, whose name is subscribed to the certificate of the proof, or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof, or acknowledgment, a Notary Public in and for the City and County of New York, dwelling in the said city, commissioned and sworn, and duly authorized
93 to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof, or acknowledgment, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the first day of July, one thousand eight hundred and sixty-nine.

CHAS. E. LOEW, *Clerk.*

[COURT SEAL.]

94 5 cent
U. S. Int. Rev. Stamp,
cancelled.

SCHEDULE B.

THIS INDENTURE, made the first day of May, in the year one thousand eight hundred and seventy-one, between The New York and
95 Oswego Midland Railroad Company, Corporation duly incorporated under and pursuant to the laws of the State of New York, the party of the first part, and Abram S. Hewitt, of the City of New York, as Trustee, the party of the second part;

WHEREAS, The said party of the first part, heretofore, and on the first day of July, one thousand eight hundred and sixty-nine, issued its first mortgage bonds, dated on that day, at and after a rate not to exceed twenty thousand dollars per mile in length of the track of its said railroad, and not to exceed an aggregate amount of eight millions of dollars, and to secure
96 the payment thereof, also on the same day duly executed and delivered to Abiel A. Low, George Opdyke, and Delos De Wolf, as Trustees, a certain mortgage or deed of trust, dated on that day;

AND WHEREAS, The said party of the first part, thereafter, and on the first day of May, one thousand eight hundred and seventy, issued its certain convertible bonds to the amount of two and one-half miliions of dollars, which said bonds contain an agreement by and on the part of said company, that in case there should thereafter be created, by act of the said

company, any lien or mortgage upon the property or franchises of the said 97
company, subsequent to the said mortgage made to Abiel A. Low, Delos De Wolf, and George Opdyke, as Trustees, on the first day of July, 1869, by the said company, then, and in that case, the lien or mortgage so created should be made a security for the said convertible bonds and the unpaid coupons in the same manner as if such security had been created at the date thereof, and which said bonds are of the following form of bond and coupon, to wit:

[CONVERTIBLE BOND.]

UNITED STATES OF AMERICA. 98

STATE OF NEW YORK.

No..... $1,000.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY.

CONVERTIBLE BOND.

KNOW ALL MEN BY THESE PRESENTS, That The New York and Oswego Midland Railroad Company is indebted and bound to Henry R. Low, or bearer, in the sum of One Thousand Dollars, lawful money of the United 99
States of America, for the payment of which sum, at the office of the said Company, in the City of New York, on the first day of May, in the year 1895, and of the interest thereon at the rate of seven per centum per annum, payable semi-annually, on the first days of November and May in each year, until the principal sum shall be paid, upon the presentation of the annexed interest warrants as they severally become due, it doth declare itself by these presents firmly bound.

This bond is one of a series of thirty-nine hundred bonds of like tenor and date, in the aggregate amounting to two millions five hundred 100
thousand dollars, and numbered consecutively from 1 to 3,900, both inclusive; fifteen hundred thereof being for $1,000, nineteen hundred thereof being for $500, and five hundred thereof being for $100.

The said New York and Oswego Midland Railroad Company, doth agree hereby that the holder of this bond shall have the privilege and option, at any time before the first day of May, A. D. 1880, of converting the principal sum hereof into the capital stock of the Company at par, that is to say, upon the surrender of this bond with the coupons not then due to the said Company, at its office, in the City of New York, the said holder 101
shall be entitled to receive ten (10) shares of the capital stock of the said Company. If default shall be made in the payment of the interest upon this bond, according to its tenor, and if such default shall continue for the period of six (6) months, then, and in that case, the whole principal sum of this bond, together with all arrearages of interest, shall at once become due and payable, anything herein to the contrary notwithstanding.

The said New York and Oswego Midland Railroad Company doth

further agree with the holder of this bond that, if there shall be hereafter created, by act of the said Company, any lien or mortgage upon the property or franchises of the said Company, subsequent to the existing mortgage made to Abiel A. Low, Delos De Wolf, and George Opdyke, as Trustees, on the 1st day of July, 1869, by the said Company, then, and in that case, the lien or mortgage so created shall be made a security for this bond and its unpaid coupons, in the same manner as if such security had been created at the date hereof; so that this bond, with all other bonds of this date and series, shall be secured proportionally with any other bonds that may be intended to be secured by such lien or mortgage.

This bond shall pass by delivery or by transfer on the books of the Company in the City of New York, and at any other place which the Company may determine. After a registration of ownership, certified hereon by the transfer agent of the Company, no transfer, except on the books of the Company, shall be valid, unless the last transfer be to bearer, which shall restore transferability by delivery, but this bond shall continue subject to successive registrations and transfers to bearer, as aforesaid, at the option of each holder. On a registration of ownership, the holder may, at his option, surrender the coupons, which will then be canceled, and thereafter interest will be payable to the registered holder or his attorney.

In witness whereof the said Company has caused its Corporate Seal to be hereunto affixed, and these presents to be signed by its President and attested by its Treasurer, this first day of May, 1870.

[SEAL.] Attest, WALTER M. CONKEY, *Treasurer.* D. C. LITTLEJOHN, *President.*

[COUPON.]

$35.

On the first day of , 18 , The NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY will pay at its office, in the City of New York, on surrender of this coupon, to bearer, or in case of registration, then to the registered holder, or order, THIRTY-FIVE DOLLARS for interest due on that day on its convertible bond.

WALTER M. CONKEY,
Treasurer.

No———

AND WHEREAS, The said party of the first part has now, by its Board of Directors, intrusted with the control and management of its corporate affairs, resolved to borrow money to a further amount not to exceed one million and five hundred thousand dollars, and to issue its second mortgage bonds to secure the repayment thereof, which said bonds are to be of the denominations severally of five hundred and one thousand dollars each, of like tenor and of even date herewith, and which said bonds are to stand equally secured, according to their amount, by these Presents and are to be of the following form of Bond and Coupon, to wit:

[SECOND MORTGAGE BOND.] 107

UNITED STATES OF AMERICA.

STATE OF NEW YORK.

No..... $1,000.

NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY.

SEVEN FREE OF

SECOND MORTGAGE BOND.

PER CENT. GOVERNMENT TAX. 108

KNOW ALL MEN BY THESE PRESENTS, That The NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY is indebted and promises to pay to Abram S. Hewitt, or bearer, on the first day of May, one thousand eight hundred and ninety-five, at its agency in the City of New York, the sum of one thousand dollars, lawful money of the United States of America, and also interest thereon from the date hereof, at the rate of seven per centum per annum, payable semi-annually on the first days of November and May in each year, free from any U. S. Government tax, on presentation and surrender at the said agency, of the respective interest coupons hereto 109 attached.

This Bond is one of a series of Second Mortgage Bonds, amounting to one million five hundred thousand dollars, which, together with an issue of thirty-nine hundred Convertible Bonds, bearing date the first day of May, A. D. 1870, and amounting to two million five hundred thousand dollars, make an aggregate amount of four millions of dollars; the payment of both of the said series of Bonds, according to the stipulations contained in said Convertible Bonds, being equally secured by a mortgage on the road, its several branches, its equipments, and all appurtenances thereto, franchises 110 and other property in the State of New York (as by reference to said mortgage will more fully and at large appear) executed in trust for the benefit of the holders of both of the said series of Bonds to Abram S. Hewitt, as trustee, and bearing date the first day of May, A. D. 1871. Subject, however, to a prior lien or mortgage, bearing date July 1st, A. D. 1869, made by said Company to Abiel A. Low, Delos De Wolf and George Opdyke as trustees, to secure the payment of an issue of First Mortgage Bonds, limited to twenty thousand dollars per mile of completed road.

This Bond shall pass by delivery, or by transfer on the books of the 111 Company in the City of New York, and at any other place which the Company may determine. After a registration of ownership, certified hereon by the Transfer Agent of the Company, no transfer, except upon the books of the Company, shall be valid, unless the last transfer shall have been to bearer, which shall restore transferability by delivery, but this Bond shall continue subject to successive registrations and transfers to bearer as aforesaid, at the option of each holder. On a registration of ownership, the

holder may, at his option, surrender the coupons, which will then be canceled, and thereafter interest will be payable to the registered holder or his attorney.

This Bond shall not become valid or obligatory until authenticated by a certificate indorsed hereon, and duly signed by the Trustee.

IN WITNESS WHEREOF, the said company has caused its Corporate Seal to be hereunto affixed, and these presents to be signed by its President, and attested by its Treasurer, this first day of May, A. D. 1871.

[SEAL.] Attest, WALTER M. CONKEY, *Treasurer.* D. C. LITTLEJOHN, *President.*

I HEREBY CERTIFY that this Bond is one of a series of second Mortgage Bonds above referred to, secured by the Mortgage above mentioned, duly executed and delivered to me a Trustee, and recorded as authorized by law.

ABRAM S. HEWITT,
Trustee.

[COUPON.]

$35.

On the first day of——, 18—, The New York and Oswego Midland Railroad Company will pay the bearer Thirty-five Dollars, at its Agency in the City of New York, for six months interest due on its second mortgage bond.

No.—— WALTER M. CONKEY,
Treasurer.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the said party of the first part, for the purpose of securing and making more sure and certain the payment of the sums of money mentioned and provided for in said convertible Bonds, hereinbefore referred to and set out, and bearing date the first day of May, one thousand eight hundred and seventy, and each and every of them, and for the further purpose of securing and making more sure and certain the payment of the sums of money mentioned and provided for in said second mortgage Bonds, hereinbefore referred to and set out, and bearing even date herewith, and each and every of them, together with the interest, after actual issue thereof, upon any and all of said Bonds, accruing, according to the true intent and meaning thereof, and, in consideration of the recited premises, the loan of said money and the sum of one dollar to the said party of the first part, in hand paid by the said party of the second part, at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged by the said party of the first part, The New York and Oswego Midland Railroad Company, the party of the first part aforesaid, Has granted, bargained,

sold, assigned, transferred and conveyed, and by these presents does grant, 117
bargain, sell, assign, transfer and convey unto the said Abram S. Hewitt,
as Trustee, the party of the second part aforesaid, and to his successor
and successors in trust, and to his and their assigns, ALL and SINGULAR
the line of railroad and railway known and to be known as the main line
of road of said Company, extending from the City of Oswego, upon Lake
Ontario, through the counties of Oswego, Oneida, Madison, Chenango,
Otsego, Delaware, Sullivan, and Orange, to the State line of the State of
New Jersey, at or near Greenwood Lake, in the county of Orange, being
about two hundred and seventy-one miles of road; the Cortland branch, 118
from Cortland, in the county of Cortland, by way of Truxton and De
Ruyter, to the aforesaid main line, being about forty-seven and one half
miles of road; the Pecksport branch, from Pecksport, in the county of
Madison, to the aforesaid main line, being about four miles of road; the
New Berlin branch, from New Berlin, in the county of Chenango, to the
aforesaid main line, being about twenty two and one-half miles of road;
the Delhi branch, from Delhi, in the county of Delaware, to the aforesaid
main line, being about sixteen and one-half miles of road, the Monticello
branch, from Monticello, in the county of Sullivan, to the aforesaid main 119
line, being about six miles of road; the Kingston and Ellenville branch,
from Kingston, in the county of Ulster, by the way of Ellenville, to the
aforesaid main line, being about thirty-five miles of road; amounting in
the aggregate to four hundred and two and one-half miles of road,
including all the railroad, railway, ways, rights of way, depots, grounds or
other lands, all tracks, bridges, viaducts, culverts, fences, and other
structures, depots, station houses, engine houses, car houses, freight houses,
wood houses, water stations. and other buildings, and all machine shops,
and all real or personal property held or acquired, or hereafter to be held 120
or acquired by the said Company, its successors or assigns, for use in
connection with the aforesaid railroad of the party of the first part, or
with any part thereof, or with the business of the same, and including all
locomotives, tenders, cars, and other rolling stock or equipments, and all
machinery, tools, implements, fuel and materials for constructing, operat-
ting, repairing or replacing the aforesaid railroad, or any part thereof, or
of any of the equipments or appurtenances of the aforesaid railroad, or
any part thereof, and all machinery of all kinds, and all and singular the
other personal property, of any nature, kind or description whatsoever, 121
belonging to the said party of the first part, wheresoever the same may
be situated, all of which personal chattles are hereby sold in connection
therewith, and not separate therefrom, and are to be taken as a part
thereof. And all tolls, incomes, issues and profits to be had or derived
from the same, or any part or portion thereof, or from any part or portion
of said term or terms or either thereof, and all right to receive or recover
the same; and also all franchises connected with or relating to the afore-

said railroad, or to the construction, maintenance, or use of the same, together with all and singular the tenements, hereditaments and appurtenances to the aforesaid railroad, lands and premises, or either thereof, belonging or in any wise appertaining, and the reversion or reversions, remainder or remainders, tolls, incomes, revenues, rents, issues, and profits thereof. AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and any and every part thereof, with the appurtenances, subject neverthelesss, to the aforesaid first mortgage lien upon said premises and appurtenances, created in and by the said mortgage, executed and delivered to Abiel A. Low, Delos De Wolf, and George Opdyke, as aforesaid, bearing date the first day of July, in the year one thousand eight hundred and sixty-nine, and recorded in the office of the Clerk of Oswego County, in the State of New York, on the third day of July, 1869, at 8 o'clock A.M., in Book No. 84, of Mortgages, on page ; and in the Clerk's office of Madison County, in said State, on said third day of July, 1869, at 4 o'clock P.M., in Book No. 61 of Mortgages, on page ; in the office of the Clerk of Oneida County, on the 5th day of July, 1869, at 10 o'clock, A.M., in Book No. 171 of Mortgages. on page ; in the office of the Clerk of Chenango County, on said 5th day of July, 1869, at 6 o'clock P.M., in Book 63 of Mortgages, at page 410; in the office of the Clerk of Otsego County, in said State, on July 6th, 1869, at 12 M., in Book No. 78 of Mortgages, at page ; in the office of the Clerk of Delaware County, in said State, on July 7th, 1869, at 9 A.M., in Liber of Mortgages No. 40, on page 343; in the office of the Clerk of Sullivan County, in said State, on July 8th, 1869, at 8 A.M., in Book No. 34 of Mortgages, page ; in the office of the Clerk of Orange County, in said State, on the 8th July, 1869, at 1 P.M., in Book No. 158, page 358 of Mortgages; in the office of the Clerk of Ulster County, in said State, on July 9th, 1869, at 8 A.M., in Book No. 95 of Mortgages, page 367, in the office of the Clerk of Cayuga County, in said State, on July 10th, 1869, at 8 A.M., in Book No. 75 of Mortgages, at page 7, etc.; in the office of the Clerk of Onondaga County, in said State, on July 10th, 1869, at 10.30 A.M., in Book No. of Mortgages, page ; and in the office of the Clerk of Cortland County, in said State, on July tenth, 1869, at 6.50 P.M., in Liber No. 10 of Mortgages, page , &c. But nothing herein contained shall be held, understood or construed to prevent said party of the first part from selling, hypothecating, or otherwise disposing of anything received in payment of shares of capital stock, or on and for other interests, or from disposing of, by and with the consent, in writing, of the party of the second part, any lands or other property and effects, not essential or necessary to be retained for the said roadway, depots, or station grounds, nor required for the construction or convenient use of the

said railroad; nor from selling shares, nor from collecting moneys due on 127
capital stock, subscriptions or otherwise, or for other things; provided the said first party shall diligently proceed to apply all such means and proceeds to the constructing, finishing, repairing, and equiping of said railroad, and to the laying and construction of a double track for the same, whenever such double track shall by them, be deemed necessary for the interests of the said Railroad Company, and to other like necessary purposes thereof, nor from receiving or using the income from the earnings of said railroad; provided also, that no default shall have been made, and at the time remain in the payment of the interest or principal of any of 128
the bonds hereby secured. But even after default in the payment of interest, the said Trustee shall have full power, in his discretion, upon the written request of the party of the first part, to convey, by way of release, or otherwise, to the persons designated by said party of the first part, any lands, acquired or held for the purpose of stations, depots, shops, or other buildings, and shall also have power to convey, as aforesaid, on like request, any lands, or other property, which, in his judgment, shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material; and also, to convey, as 129
aforesaid, on like request, any lands not occupied by the track, which may become disused by reason of a change in the location of any station-house, depot, shop, or other building, connected with the said railroad, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other buildings, as the said party of the first part may deem it expedient to disuse or abandon, by reason of such change, and to consent to any such change, and to such other changes in the location of the track or depot, or other buildings, as shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; but any lands which 130
may be acquired for permanent use, in substitution for any so released, shall be conveyed to the said Trustee, upon the trusts of these presents; and the said Trustee shall also have full power to allow the said party of the first part, from time to time, to dispose of such portion of the equipments, machinery and implements, at any time held or acquired, for the use of the said railroad, as may have become unfit for such use, replacing the same by new, which shall be conveyed to the said Trustee, or be otherwise made subject to the operation of these presents.

But it is hereby covenanted and agreed by and on behalf of both the 131
parties of this instrument that no such sale or sales shall be made by the party of the first part, whether before or after default in payment of interest, of any property of any kind whatever, needed or used by or useful for the said party of the first part in its immediate or future operations, nor of any property of what kind soever that shall, by the sale thereof, materially injure or lessen the value of the mortgage security, nor unless the party of the second part shall unite in the opinion that such sale is for the best

interest of the party of the first part, and does not affect materially or impair the mortgage security so held by him in trust as aforesaid, and the said party of the second part, for himself and for his successor in the trust, doth hereby and in consideration hereof, covenant and agree that he will not aid, consent to, nor approve of any such sale or transfer unless in his opinion and judgment the same shall be for the benefit and advantage of the party of the first part, and without prejudice to or materially affecting or impairing the mortgage security so held by him as Trustee as aforesaid. TO HAVE AND TO HOLD the estate, property, rights, privileges, franchises, and interests of the said party of the first part, together with all and singular the emoluments, income and advantages, tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, unto the said Abram S. Hewitt, the party of the second part, his successor or successors and assigns, on the trusts and for the uses and purposes herein declared, and none other, PROVIDED ALWAYS, and these presents are made and executed upon this express condition, that if the said party of the first part shall well and truly pay or cause to be paid to the holders of the said Bonds or obligations intended to be secured hereby, and each and every of them, after the same shall be issued, the principal sums of money therein respectively mentioned, at the maturity thereof, according to their true intent and meaning, with the interest thereon accruing, at the time and in the way and manner therein provided, according to the true intent and meaning of these presents; that then and from thenceforth this Indenture and the estate hereby granted, shall cease, determine and be utterly void and of non effect, without any other release or formal re-conveyance, re-entry, acknowledgment of satisfaction, or any other act whatsoever. And the said party of the first part, in consideration of the premises, hereby covanents and agrees to and with the said Abram S. Hewitt, his successor and successors in said trust, and his and their assigns, and the said party of the first part will, at any time or times hereafter, upon the reasonable request of the said party of the second part, his successors or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and reasonable deeds, conveyances, assignments, and assurances in the law, for the better and more effectual vesting, and confirming of the premises hereby granted, or intended so to be and especially for conveying any property, subsequently to the date hereof acquired by the said party of the first part, and comprehended in the description contained in these presents, if any such there be, which shall not inure to the use and benefit of the holders of said Bonds, under the terms and covenants of this Indenture, to the said party of the second part, his successors and assigns, as by him or them, or his or their counsel learned in the law shall be reasonably devised, advised or required, for the better effectuating of the objects and purposes of these presents.

AND FURTHER, that the said party of the first part will do and perform 137
all the things on the part of the said first party to be done and performed as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue of said Bonds in good faith, to the construction of the said railroad, and to putting the same into operation, and to the purposes hereinbefore recited or mentioned as the objects thereof.

AND FURTHER, that the said first party will pay unto the holder or holders of the said Bonds respectively, the said principal sums of money therein respectively mentioned and as expressed therein, and the interest thereon as the same shall become due and payable. 138

AND FURTHER, that in case of default in the payment of the interest on any day on which the same becomes due and payable, and such default continuing for a period of six months, that then, that is, after the expiration of the said six months, the whole amount of principal and interest of the Bonds hereby secured shall be deemed to become, and shall be due and payable. AND the said party of the first part shall and will, on demand made by the party of the second part, his successor or assigns, the trustee for the time being or his or their agent or agents, duly authorized in writing, assign and transfer in due form to him or them, or to his or their agent or agents 139
so authorized, the actual possession of all the herein granted and conveyed property and premises, and herein recited and mentioned or intended to be embraced in this trust. AND FURTHER, that the expense of taking, holding and managing the said property and premises, if possession be taken, shall be paid from the income, and, if necessary, from the sale of the property and premises by the said trustee for the time being. AND FURTHER, that in such case, the party of the second part, his successors in said trust and assigns, shall and may by himself or themselves, or his or their officers and agents, take and receive, collect, and have the income and profits of the 140
said railroad and other property, first applying the same to the payment and discharge of all current necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges, and next, to the payment of all sums of money due and payable upon the aforesaid Bonds, issued by said party of the first part, and hereby secured according to the tenor thereof.

AND FURTHER, that the said party of the second part, and his successor in said Trust, or assigns, having entered, as heretofore mentioned, into full possession of the premises, property and estate hereby conveyed (the 141
said default still continuing), at his or their discretion, and with the approbation of any Court of competent jurisdiction, of said State, or on the written request of the holders of at least forty per centum of the bonds hereby secured, and then outstanding unpaid, shall proceed to sell and dispose of, or cause to be sold and disposed of, all the premises, property and estate, hereby conveyed or intended to be conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest, according

142 to the tenor thereof, of all such of said bonds hereby secured and then outstanding, as may have been issued by the said first party, and which then remain unpaid, together with all benefit and equity of redemption of said party of the first part therein, at public auction, in the city of New York, to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the specific property to be sold, by publishing the same in at least two newspapers, of good general circulation, in said City, and wherever else the said Trustee may deem expedient or required by law, for a period of at least six months previous to such sale, and as the
143 attorney or attorneys of the said first party, for that purpose, by these presents, duly constituted and appointed, make, execute and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to said purchaser or purchasers, all such estate, right, property and interest, and to the same extent as the said first party had therein at the date hereof, or at any time subsequent, and also a good and sufficient transfer and assignment of said personal property, choses in action, contracts, and leases, and out of the moneys arising from such sale or sales, to retain the cost and charges of
144 advertisement of the sale of the said premises, and all other sums of money which said Trustee, or his successor in said trust, may have been obliged to pay, by reason of his or their taking possession of, and operating said premises, and a reasonable allowance for his own services, and for legal professional advice, aid and assistance in effecting and consummating said possession, operation and sale. AND ALSO, the principal and interest which shall then remain due and unpaid on said bonds remaining outstanding, and hereby secured as aforesaid, for the benefit of, and to be paid to the holders thereof, and then restore the residue of the said proceeds to the said party
145 of the first part, it being hereby expressly understood that the bonds issued by said party of the first part, and secured by these presents, shall be ratably received in payment of said sale, by said Trustee, or his successor, in case any such sale shall be made, at the option of the holder or holders thereof, and the said sale, when fully consumated shall be a perpetual bar, both in law and in equity against the said party of the first part, and all persons claiming or to claim the premises or any part thereof, by, through, from or under said party of the first part, subsequent to the date of these presents. AND IT IS HEREBY DECLARED AND AGREED, that the receipt of the said Trustee shall
146 be a sufficient discharge to the purchaser or purchasers of the premises, which shall be sold as aforesaid, for his or their purchase money, and that such purchaser or purchasers, his or their heirs, executors or administrators, shall not, after payment thereof, and having such receipts, be liable to see to the application of such purchase money, upon or for the trusts or purposes of these presents, or be in any manner whatever answerable for any loss, misapplication or nonapplication of such purchase money, or be obliged to inquire into the necessity, expediency or authority of, or for any

such sale. But nothing herein contained shall be so construed as to deprive 147
the said Trustee of the right to proceed by bill in equity, in any Court of competent jurisdiction, for a foreclosure of this mortgage, and a sale of the herein granted property, franchises and premises, at his option, at any time after default shall have been made in the payment of the interest or principal hereby intended to be secured. AND THIS INDENTURE FURTHER WITNESSETH, that these presents, and the said second Mortgage Bonds hereby secured, or intended so to be, are made, executed and issued or delivered upon the terms, conditions and agreements following, that is to say: 148

First.—That the actual possession, use, management and control of all the hereinbefore granted estate, property and premises, shall be and remain in and with the said party of the first part, so long as the bonds so issued shall be and remain without default or forfeiture.

Second.—That in case of any vacancy in the said trusteeship, by the incapacity to act, death, or resignation of the said trustee, or from any other cause, all his estate, right, interest, power, and control shall be thereupon divested, and cease and determine, and the said Company, party of the first part, and the holders of not less than forty per cent. 149
in amount of the bonds hereby secured, and then outstanding, shall select a new Trustee to fill the vacancy thereby created; and in case of disagreement between said Company and the aforesaid holders of the said bonds, then, and in that case, the holders of not less than fifty per centum in amount of the said bonds hereby secured, may, upon due notice to said party of the first part apply to the Circuit Court of the United States for the District of New York, or to any other Court of competent jurisdiction for any Judicial District, in which any part of the aforesaid railroad may be situate, to appoint a 150
new trustee to supply the vacancy, and such proceedings may be had, and appointments and selections made, as often as the like occasion may require the appointment of a trustee to execute the trust herein declared; and when so selected, such new trustee shall thereupon become vested for the purposes of the said trust, with all the estate, rights, interests, power, property, or control, hereby conveyed or granted to, or vested in the said Abram S. Hewitt, by these presents, without any further assurance, grant or conveyance of the same, as fully and effectually as if such appointment had been originally 151
made herein. But if the same shall be necessary, both the said party of the first part, and such new trustee, or either of them, shall make, execute, and deliver all necessary conveyances, and agreements, and grants, and powers, and authorities, for that purpose.

AND IT IS FURTHER agreed and understood, by and between the parties to these presents, that the said party of the second part, his successor

or successors in said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts or negligences of any agent or agents necessarily employed by him or them, when such agent or agents are selected with proper discretion, or with the approbation of the said party of the first part. And the officers of the said Railroad Company shall have, at all times, the right to inspect the books kept by the receivers of the road and their agents.

AND THIS INDENTURE FURTHER WITNESSETH, that the said party of the second part hereby accepts the aforesaid trusts, and also covenants and agrees, to and with said party of the first part, to execute the same upon the terms and conditions hereinbefore, as well as hereinafter mentioned and provided, and which said terms and conditions are hereby mutually agreed to and upon by both of the parties to these presents.

IN TESTIMONY WHEREOF, the said party of the first part, in pursuance of authority given by law, and in conformity with the order of its Board of Directors, has caused this indenture to be signed by D. C. Littlejohn, its President, and Walter M. Conkey, its Treasurer, and the corporate seal of the Company to be affixed thereto, and the party of the second part has hereunto subscribed his name and affixed his seal the day and year first in this indenture written.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY.

By

CORPORATION SEAL.

D. C. LITTLEJOHN, *President.*
WALTER M. CONKEY, *Treasurer.*
ABRAM S. HEWITT, [SEAL.] *Trustee.*

The Bonds secured by this Mortgage are duly stamped, in compliance with the Internal Revenue law of the United States.

Signed, sealed and delivered in the presence of

HEZEKIAH WATKINS.

STATE OF NEW YORK, CITY AND COUNTY OF NEW YORK. } *ss.:*

On this twenty-first day of July, one thousand eight hundred and seventy one, before me, the undersigned, personally came Dewitt C. Littlejohn, the President, and Walter M. Conkey, the Treasurer of the New York and Oswego Midland Railroad Company, of the State of New York, with each of whom I am personally acquainted, who, being by me severally and duly sworn, doth each for himself severally depose and say: That the

said Dewitt C. Littlejohn resides at Oswego City, in the County of Oswego; 157
that he is the President of the New York and Oswego Midland Railroad Company; that the said Walter M. Conkey resides at Norwich, in the County of Chenango; that he is the Treasurer of the New York and Oswego Midland Railroad Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such Corporate Seal; that it was thereto affixed by order of the Board of Directors of said Company; that the said Dewitt C. Littlejohn signed his name thereto by the like order, as President, and that the said Walter M. Conkey signed his name thereto by the like order, as Treasurer of said Company. 158

And on the seventeenth day of July, one thousand eight hundred and seventy-one, also personally appeared before me Abram S. Hewitt, to me known to be the same person described in, and who executed the foregoing instrument, and acknowledged to me that he had executed the same for the purposes therein mentioned.

HEZEKIAH WATKINS,

Notary Public in and for New York City and County, NOTARY SEAL. 159

STATE OF NEW YORK, CITY AND COUNTY OF NEW YORK, } ss:

I, Charles E. Loew, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a court of Record, do hereby certify that Hezekiah Watkins, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the City and County 160
of New York dwelling in the said city, commissioned and sworn and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the twenty-fourth day of July, A. D., one thousand eight hundred and seventy-one.

CHAS. E. LOEW, *Clerk.* 161

[COURT SEAL.]

5 Cent
U. S. Int. Rev. Stamp.
cancelled.

SCHEDULE C.

THIS INDENTURE, made the twentieth day of June, in the year one thousand eight hundred and seventy-two, between the New York and Oswego Midland Railroad Company, a corporation, duly incorporated under and pursuant to the laws of the State of New York, and residing in said State, party of the first part, and Abiel A. Low, of the City of Brooklyn, George Opdyke, of the City New York, and Delos De Wolf, of the City of Oswego, and State aforesaid, as Trustees, parties of the second part:

WHEREAS, The New York and Oswego Midland Railroad Company, was authorized by the Laws of the State of New York and by its Articles of Association, filed in the office of the Secretary of State on the eleventh day of January, 1866, to construct a railroad from the City of Oswego to the City of New York, and which said road is substantially completed.

AND WHEREAS, it was thereafter deemed essential to the interests of said Company, to extend and construct a railroad to some point on Lake Erie or the Niagara River, and the said Company was thereunto duly authorized and empowered by an Act of the Legislature of the State of New York, entitled "An Act to authorize the New York and Oswego Midland Railroad to extend its road, and to facilitate the construction thereof." Passed April 5th, 1871, being chapter 298 of the Laws of 1871.

AND WHEREAS, The said Company is now engaged in building and constructing such extension of their railroad from the Village of Cortland, in the County of Cortland, to a point on the Niagara River, at or near Buffalo, and now desires to obtain the money and materials necessary to complete such extension and construction, as aforesaid, and to that end, has, by its Board of Directors, entrusted with the control and management of its corporate affairs, *Resolved* to borrow money to an amount not to exceed six millions of dollars, and to issue bonds for the repayment thereof, which bonds are to be of the amount and denomination severally of one thousand ($1,000) dollars and five hundred ($500) dollars each, and are to stand equally secured, according to their amount, by these presents, and are to be of the following form of bond and coupon, to wit:

(BOND OF $1,000.)

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY,

Western Extension.

The New York and Oswego Midland Railroad Company, of the State of New York, promises to pay to George Opdyke, or to the holder of this bond, thirty years from the date hereof, for value received, the sum of one thousand dollars in United States gold coin at par, at its agency in the City

of New York, and also interest thereon from date, at the rate of seven per 167
cent. per annum, payable semi-annually in gold coin as aforesaid, free of all United States Government tax, on the first days of January and July in each year, upon presentation of the respective coupons hereunto annexed.

This bond is one of a series of bonds amounting in the aggregate to six millions of dollars, and consisting of forty-five hundred bonds of one thousand dollars each, numbered consecutively from one to forty-five hundred inclusive, and three thousand bonds of five hundred dollars each, numbered consecutively from forty-five hundred and one to seventy-five hundred inclusive, all bearing even date herewith, the payment whereof is secured by 168
a first mortgage on the Western Extension of the railroad of said Company, its equipments and all appurtenances thereto, franchises and other property in the State of New York, executed in trust for the benefit of the holders of these bonds to Abiel A. Low, George Opdyke and Delos De Wolf, bearing date the twentieth day of June, 1872.

This bond shall pass by delivery, or by transfer on the books of the Company, in the City of New York, and at any other place which the Company may determine. After a registration of ownership, certified hereon by the transfer agent of the Company, no transfer except upon the books of the 169
Company shall be valid, unless the last transfer be to bearer, which shall restore transferability by delivery; but this bond shall continue subject to successive registrations and transfers to bearer, as aforesaid, at the option of each holder. On a registration of ownership, the holder may, at his option, surrender the coupons, which will then be cancelled, and thereafter interest will be payable to the registered holder, or his attorney.

This bond shall not become obligatory until the certificate hereunto subscribed is duly signed by the trustees aforesaid.

IN WITNESS WHEREOF, the said Company has caused its corporate 170
seal to be hereunto affixed, and these presents to be signed by its President, and attested by its Treasurer, this first day of July,
[SEAL.] 1872.

Attest, WALTER M. CONKEY, *Treasurer*, D. C. LITTLEJOHN, *President*.

(CERTIFICATE.)

This is to certify, that the New York and Oswego Midland Railroad 171
Company has executed to us a mortgage or deed of trust, dated the twentieth day of June, 1872 (which is by reference made part of this certificate), purporting to convey the Western Extension of the railroad of said Company, built and to be built from the village of Cortland, in the County of Cortland, to the City of Buffalo, or to some point on the Niagara River (in accordance with the provisions of chapter 298 of the Laws of 1871, of the State of New York), with all equipments and appurtenances thereof, and its franchises,

and all other property therewith, in the State of New York, now owned and hereafter to be acquired, in trust, for the benefit of the holders of these bonds of similar tenor and date with the foregoing, issued and to be issued to an amount not to exceed $6,000,000, with power to take possession of said railroad, equipments, appurtenances and franchises, and to use or sell the same in case of default for the space of six months in the payment of the interest on any of said bonds (in case of which default it is provided that the principal of said bonds, shall also become due and payable), and that the foregoing is one of the several bonds described in and secured by said deed of trust or mortgage, and that the said mortgage or deed of trust has been duly recorded as authorized by law.

ABIEL A. LOW,
GEORGE OPDYKE,
DELOS DE WOLF,
} *Trustees.*

$35.00. (COUPON.)

Western Extension.

The New York and Oswego Midland Railroad Company will pay the bearer thirty-five dollars, in gold coin, at its agency in the City of New York, on the first day of January, 1873, for six months' interest on first mortgage bond

No. WALTER M. CONKEY, *Treasurer.*

NOW THEREFORE, THIS INDENTURE WITNESSETH, that the said party of the first part, for the purpose of securing and making more sure and certain the payment of the sums of money mentioned and provided for in the said bonds, bearing date July 1st, 1872, and each and every of them, with the interest thereon, accruing after actual issue, according to the true intent and meaning thereof, and in consideration of the recited premises, the loan of said money, and the sum of one dollar to the said party of the first part, in hand paid by the said parties of the second part, at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged by the said party of the first part, the New York and Oswego Midland Railroad Company, the party of the first part aforesaid, HAS granted, bargained, sold, assigned, transferred and conveyed, and by these presents, DOES grant, bargain, sell, assign, transfer and convey, unto the said Abiel A. Low, George Opdyke and Delos De Wolf, as Trustees, the party of the second part aforesaid, and to the survivors and survivor of them, and to their successor and successors in the trust, and to their assigns, all and singular the line of railroad known and to be known as the "Western Extension" of the New York and Oswego Midland Railroad, from the village of Cortland, in the County of Cortland, to a point on the Niagara River, at or near Buffalo, in the State of New York, and its equipments and all appurtenances thereof, franchises and all other property connected therewith, in the State

of New York, TOGETHER with all and singular the lands, tracks, lines, rails, 177
purchased, or to be purchased, bridges, viaducts, culverts, ways, rights of way, and materials, buildings, ferries and ferry-boats, piers, wharves, erections, fences, walls, fixtures, privileges, easements, rights under leases, terms and parts of terms, agreements, covenants and contracts of all and every kind, franchises, rights and interests, real estate, personal property, choses in action, leasehold and other things, of and belonging to the said party of the first part, and connected with or appurtenant to said railroad, of every kind, nature and character whatsoever, and all railway stations and depots, engine houses and machine shops, with all the appur- 178
tenances necessary or convenient for the sole, complete and entire use and operation, as well as maintenance of the said road or railway ; AND ALSO, all the locomotives, engines, tenders, cars of every kind, carriages, rolling stock, materials, tools and machinery, now owned or hereafter to be acquired by, or belonging, or appertaining to, said railroad and connected with the proper equipment, operation and conduct of the same. All of which personal chattels are hereby declared and agreed to be fixtures and appurtenances of the said railroad, and are to be used and sold therewith, and not separate therefrom, and are to be taken as a part thereof. 179
AND ALL tolls, incomes, issues and profits, to be had or derived from the same, or any part or portion thereof, or from any part or portion of said term or terms, or either thereof, and all right to receive, or recover the same.

AND TOGETHER with all improvements or additions made, or to be made to any or all of said properties, estates, railroad, or railway, and their appurtenances by said party of the first part, or by others. AND ALSO, all and every other estate, interest, property, or thing, which the said party of the first part owns and holds, or may and shall hereafter acquire and hold, necessary or convenient for the use, occupation, operation 180
and enjoyment of the aforesaid railroad, railways, leases and property, rights, privileges and franchises, or any part or portion thereof. AND ALSO, all rights and privileges to use the said road-beds, tracks, sidings, turnouts and switches, constructed at the execution of these presents, or which may and shall be hereafter constructed, for the convenient use of said railroad, and railway, or any part thereof, as fully and effectually as the said Company, the party hereto of the first part, is or may be, by law, entitled to have or acquire. But nothing herein contained shall be held, understood or construed, to prevent said party of the first part from selling, 181
hypothecating, or otherwise disposing of anything received in payment of shares of capital stock, or on and for other interests ; or from disposing of, by and with the consent, in writing, of the parties of the second part, any lands or other property and effects, not essential or necessary, in their judgment, to be retained for the said roadways, depots or station grounds, nor required for the construction, or convenient use of the said railroad, nor from selling shares, nor from collecting moneys due on capital stock, subscriptions

or otherwise or for other things: provided the said first party shall diligently proceed to apply all such means and proceeds to the constructing, finishing, repairing and equipping of said railroad, and to the laying and construction of a double track for the same, whenever such double track shall, by them, be deemed necessary for the interests of said Railroad Company, and to other like necessary purposes thereof; nor from receiving and using the income from the earnings of said railroad: provided, also, that no default shall have been made, and at the time remain in the payment of the interest or principal of any of the bonds hereby secured. But even after default in the payment of interest, the said trustees shall have full power, in their discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the persons designated by the said party of the first part, any lands acquired or held, for the purposes of stations, depots, shops or other buildings; and shall, also, have power to convey, as aforesaid, on like request, any lands or property, which, in the judgment of the trustees, shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel or other material; and also to convey, as aforesaid, on like request, any lands not occupied by the track, which may become disused by reason of a change of the location of any station house, depot, shop or other building, connected with the said railroad; and such lands occupied by the track and adjacent to such station-house, depot, shop or other buildings as the said party of the first part may deem it expedient to disuse or abandon, by reason of such change, and to consent to any such change, and to such other changes in the location of the track or depot, or other buildings as shall have become expedient; and to make and deliver the conveyances necessary to carry the same into effect; but any lands which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the trustees, upon the trusts of these presents; and the trustees shall, also, have full power to allow the said party of the first part, from time to time, to dispose of such portions of the equipments, machinery and implements at any time held or acquired, for the use of the said railroad, as may have become unfit for such use, replacing the same by new, which shall be conveyed to the trustees, or be otherwise made subject to the operation of these presents. TO HAVE AND TO HOLD the estate, property, rights, privileges, franchises and interests of the said party of the first part, together with all and singular the emoluments, income and advantages, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, unto the said Abiel A. Low, George Opdyke and Delos De Wolf, parties of the second part, their survivor or survivors, and their successors or successor, and assigns, on the trusts and for the uses and purposes herein declared, and none other. PROVIDED ALWAYS that these presents are made and executed upon the express condition that if the said party of the first part shall well

and truly pay, or cause to be paid, to the holders of the said bonds or 187
obligations, intended to be secured hereby, and each and every of them, after the same shall be issued, the principal sums of money therein respectively mentioned, at the maturity thereof, according to their true intent and meaning, with the interest thereon accruing, at the time, and in the way and manner, therein provided, according to the true intent and meaning of these presents, that then and from thenceforth, this Indenture and the estate hereby granted shall cease, determine and be utterly void and of non-effect, without any other release or formal re-conveyance, re-entry, acknowledgment of satisfaction, or any other act whatsoever. 188

AND the said party of the first part, in consideration of the premises, hereby covenants and agrees, to and with the said Abiel A. Low, George Opdyke, and Delos De Wolf, their survivors or survivor, successor and successors, in said trust and assigns, that the said party of the first part will, at any time or times hereafter, upon the reasonable request of the said parties of the second part, their successors or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and reasonable deeds, conveyances, assignments and assurances, in the law, for the better and more effectual vesting and confirming the premises hereby 189
granted, or intended so to be, and especially for conveying any property, subsequently to the date hereof, acquired by the said party of the first part, and comprehended in the description contained in these premises, if any such there be, which shall not inure to the use and benefit of the holders of said bonds, under the terms and covenants of this indenture, to the said parties of the second part, their survivors or survivor, successors and assigns, as by them or their counsel learned in the law, shall be reasonably devised, advised or required, for the better effectuating of the objects and purposes of these presents; AND FURTHER, that the said party of the first part will 190
do and perform all the things on the part of the said first party to be done and performed, as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue of said bonds, in good faith, to the construction of the said railroad, and to putting the same into operation, and to the purposes hereinbefore recited or mentioned, as the objects thereof; AND FURTHER, that the said first party will pay unto the holder or holders of the said bonds respectively, the said principal sums of money, therein respectively mentioned, and as expressed therein, and the interest thereon, as the same shall become due and payable: AND FURTHER, 191
that in case of default in the payment of the interest on any day on which the same becomes due and payable, and such default continuing for a period of six months, that then, that is after the expiration of the said six months, the whole amount of principal and interest of the bonds hereby secured, shall be deemed to become, and shall be due and payable, and the said party of the first part shall and will, on demand made by the parties of the second part, their survivors or survivor, their successors or assigns,

trustee or trustees, for the time being, or their agent or agents, duly authorized in writing, assign and transfer in due form to them, or to their agent or agents so authorized, the actual possession of all the herein granted and conveyed property and premises, and herein recited and mentioned, or intended to be embraced in this trust; AND FURTHER, that the expense of taking, holding and managing said property and premises, if possession be taken, shall be paid from the income, and if necessary, from the sale of the property and premises, by the said trustee or trustees, as the case may be, for the time being; AND FURTHER, that in such case the parties of the second part, their successors in said trust, and assigns shall and may by themselves, or their officers and agents, take and receive, collect and have the income and profits of the said railroad and railway and other property, first applying the same to the payment and discharge of all current necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges; and next to the payment of all sums of money due and payable upon the aforesaid bonds issued by said party of the first part, and hereby secured, according to the tenor thereof; AND FURTHER, that the said parties of the second part, their successors in said trust, heirs or assigns, having entered, as hereinbefore mentioned, into the full possession of the premises, property and estate hereby conveyed (the said default still continuing), at his or their discretion, and with the approbation of the Supreme Court of said State may, or on the written request of the holders of at least twenty per centum of the bonds hereby secured, and then outstanding unpaid, and upon being duly indemnified against any and all liability, damages, costs, charges and expenses by reason thereof, shall proceed to sell and dispose of, or cause to be sold and disposed of, all of the premises, property, and estate hereby conveyed, or intended to be conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest, according to the tenor thereof, of all of such of said bonds hereby secured and then outstanding, as may have been issued by the said first party, and which then remain unpaid, together with all benefit and equity of redemption of said party of the first part therein, by public auction, in the city of New York, to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the specific property to be sold, by publishing the same in at least two newspapers, of good general circulation, in said city, and two newspapers in the City of Buffalo, and wherever else the trustees may deem expedient or required by law, for a period of at least ninety days previous to such sale; and as the attorney or attorneys of the said first party, for that purpose, by these presents, duly constituted and appointed, make, execute, and deliver to the purchaser, or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to said purchaser or purchasers, all such estate, right, property and interest, and to the same extent as the said first party

had therein at the date hereof, or at any time subsequent, and also a good 197
and sufficient transfer and assignment of said personal property, choses in action, contracts and leases, and out of the moneys arising from such sale or sales, to retain the cost and charges of advertisement of the said sale of the premises, and all other sums of money which said trustees or their successors in said trust may have been obliged to pay by reason of their taking possession of and operating said premises, and a reasonable allowance for their own services, and for legal professional advice, aid and assistance, in effecting and consummating said possession, operation and sale; and also the principal and interest which shall then remain due 198
and unpaid on said bonds remaining issued and outstanding, and hereby secured as aforesaid for the benefit of, and to be paid to, the holders thereof, and then restore the residue of the said proceeds to the said party of the first part, it being hereby expressly understood that the bonds issued by said first party, and secured by these presents, shall be ratably received in payment of said sale, by said trustees, or their successors, in case any such sale shall be made, at the option of the holder or holders, thereof; and the said sale, when fully consummated, shall be a perpetual bar, both in law and equity, against the said party of the first part and all persons 199
claiming or to claim the premises, or any part thereof, by, through, or under said party of the first part, subsequent to the date of these presents.

AND THIS INDENTURE FURTHER WITNESSETH, that these presents and the said bonds hereby secured, or intended to be, are made, executed, and issued or delivered upon the terms, conditions, and agreements following, that is to say:

First.—That the actual possession, use, management, and control of all the hereinbefore granted estate, property, and premises, shall be and remain in and with the said party of the first part, so long as the 200
bonds so issued shall be and remain without default or forfeiture.

Second.—That the said bonds shall be countersigned by the said parties of the second part, and that the said parties of the second part are hereby authorized and directed to issue bonds to an amount not to exceed in par value the sum of one million of dollars, to be used for the purchase of depot grounds, terminal facilities in the City of Buffalo, or on the Niagara River, and for other general purposes of said Company, and that in addition thereto bonds shall be issued by them, and the avails thereof paid over to said party of the first part, only 201
to such an amount as shall be at and after the rate of twenty-five thousand dollars in bonds per mile of said railroad actually in process of construction.

Third.—That in the case of any vacancy in the said trusteeship, by the incapacity to act, death or resignation of either of the said trustees, or from any other cause, all his estate, right, interest, power and

control, shall be thereupon divested, and cease and determine, but without destroying, or without discontinuance of, the trust, and the said company, party of the first part, and the surviving trustees, parties of the second part, shall select a new trustee to fill the vacancy thereby created, and, in case of disagreement between said company and the said trustees, the holders of not less than twenty per centum in amount of the said bonds hereby secured, may apply to the Supreme Court of said State, to appoint a new trustee or trustees, to supply the vacancy, and such proceedings may be had, and appointments and selections made, as often as the like occasion may require the appointment of a trustee to execute the trusts herein declared; and when so selected, such new trustee shall thereupon become vested for the purpose of the said trust with all the estate, rights, interests, power, property, and control, hereby conveyed, or granted to, or vested in the said Abiel A. Low, George Opdyke and Delos De Wolf, by these presents, without any further assurance, grant, or conveyance of the same, as fully and effectually as if such appointment had been originally made herein. But if the same shall be necessary, both the said party of the first part, and such new trustee, or either of them, shall make, execute, and deliver all necessary conveyance and agreements and grants and powers and authorities for that purpose.

AND IT IS FURTHER understood and agreed by and between the parties to these presents, that the said parties of the second part, their successor or successors in said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of each other to which they do not severally assent, nor for the acts or negligencies of any agent or agents necessarily employed by them, when such agent or agents are selected with proper discretion, or with the approbation of the said party of the first part. And the officers of the said railroad company shall have, at all times, the right to inspect the books kept by the receivers of the road and their agents.

AND THIS INDENTURE FURTHER WITNESSETH, that the said parties of the second part hereby accept the aforesaid trusts, and also covenant and agree to and with the said party of the first part, to execute the same, upon the terms and conditions hereinbefore, as well as hereinafter mentioned and provided, and which said terms and conditions are hereby mutually agreed to and upon by both of the parties to these presents.

IN TESTIMONY WHEREOF, the said party of the first part, in pursuance of authority given by law, and in conformity with the order of the Board of Directors, has caused this Indenture to be signed by De Witt C. Littlejohn, its President, and Walter M. Conkey, its Treasurer, and the corporate seal of the company

to be affixed thereto, and the parties of the second part have 207
hereunto subscribed their names and affixed their seals the
day and year first in this Indenture written.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY,

By

[COMPANY SEAL.]

D. C. LITTLEJOHN, *President*,
WALTER M. CONKEY, *Treasurer*,
A. A. LOW, [L. S.]
GEORGE OPDYKE, [L. S.] *Trustees*,
DELOS DE WOLF, [L. S.]

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Signed, sealed, and delivered in presence of

FREDERICK S. LITTLEJOHN, as to A. A. LOW.

The Bonds secured by this Mortgage are duly stamped in compliance with the Internal Revenue Laws of the United States.

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STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.:*

On this 20th day of June, one thousand eight hundred and seventy-two, before me, the undersigned, personally came De Witt C. Littlejohn, the President, and Walter M. Conkey, the Treasurer, of the New York and Oswego Midland Railroad Company, of the State of New York, with each of whom I am personally acquainted, who, being by me severally and duly sworn, doth each for himself severally depose and say: that the said De Witt C. Littlejohn resides at Oswego, in the County of Oswego; that he is 210
the President of the New York and Oswego Midland Railroad Company; that the said Walter M. Conkey resides at Norwich, in the County of Chenango; that he is the Treasurer of the New York and Oswego Midland Railroad Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was thereto affixed by order of the Board of Directors of said Company; that the said De Witt C. Littlejohn signed his name thereto by the like order, as President, and that the said Walter M. Conkey signed his name thereto by the like order, as Treasurer of said Company.

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And on the 21st day of June, one thousand eight hundred and seventy-two, also, personally appeared before me, George Opdyke, to me known to be the same person described in, and who executed the foregoing instrument, and he acknowledged that he had executed the same for the purposes therein mentioned.

HEZEKIAH WATKINS,

[NOTARY SEAL.] *Notary Public in and for said City and County.*

212 STATE OF NEW YORK, } ss:
CITY AND COUNTY OF NEW YORK, }

I, Charles E. Loew, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, do hereby certify, that Hezekiah Watkins, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment, a Notary Public in and for the City and County of New York, dwelling in said city, commissioned and sworn, and duly
213 authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 3d day of July, one thousand eight hundred and seventy-two.

CHAS. E. LOEW, *Clerk.*

[COURT SEAL.]

214 5 cent
U.S. Int. Rev. Stamp,
cancelled.

STATE OF NEW YORK, } ss:
CITY AND COUNTY OF NEW YORK. }

On this 24th day of June, one thousand eight hundred and seventy-two, personally appeared before me Delos De Wolf, to me personally known to be one of the same persons described in, and who executed the foregoing
215 instrument, and he acknowledged to me that he had executed the same for the purposes therein mentioned.

THEO. HOUSTON,
Notary Public in and for said City and County.

STATE OF NEW YORK, } ss:
OSWEGO COUNTY, CLERK'S OFFICE, }

I, John J. Stevens, Clerk of said County and of the Supreme and County Courts therein, which are Courts of Record, do hereby certify, that
216 Theo. Houston, Esq., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, was, at the time of taking such proof or acknowledgment, a Notary Public in and for said County, and duly authorized to take the same, and that I am well acquainted with his handwriting, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. And I further certify, that the said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof, I have hereunto set my hand and affixed the seal of said County and Courts, at the City of Oswego, this 24th day of June, 1872.

JOHN J. STEVENS, *Clerk.*

[COURT SEAL.]

5 cent
U.S. Int. Rev. Stamp,
cancelled.

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STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } *ss.:*

On this 3d day of July, in the year 1872, before me personally came Frederick S. Littlejohn, subscribing witness to the above instrument, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in Pompton, New Jersey; that he was acquainted with Abiel A. Low, and knew him to be the person described in, and who executed the said instrument; and that he saw him execute and deliver the same, and that he acknowledged to him, the said Frederick S. Littlejohn, that he 219
executed and delivered the same, and that he, the said Frederick S. Littlejohn, thereupon subscribed his name as a witness thereto.

THEODORE R. SHEAR,

[SEAL.] *Notary Public City and County of New York.*

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } *ss.:*

I, Charles E. Loew, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a 220
Court of Record, do hereby certify that Theodore R. Shear, whose name is subscribed to the certificate of the proof, or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof, or acknowledgment, a Notary Public in and for the City and County of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof, or acknowledgment, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the 221
seal of the said Court and County, the 3d day of July, 1872.

CHAS. E. LOEW, *Clerk.*

[COURT SEAL.]

5 cent
U. S. Int. Rev. Stamp,
cancelled.

SCHEDULE D.

THIS INDENTURE, made the twentieth day of September, in the year one thousand eight hundred and seventy-two, between the New York and Oswego Midland Railroad Company, a Corporation, duly incorporated under and pursuant to the laws of the State of New York, and residing in said State, party of the first part, and Delos De Wolf, of the City of Oswego, and State aforesaid, as Trustee, party of the second part:

WHEREAS, The New York and Oswego Midland Railroad Company was authorized by the Laws of the State of New York and by its Articles of Association, filed in the office of the Secretary of State on the eleventh day of January, 1866, to construct a railroad from the City of Oswego to the City of New York, and which said road is substantially completed;

AND WHEREAS, it was thereafter deemed essential to the interests of said Company to extend and construct a railroad to some point on Lake Erie or the Niagara River, and the said Company was thereunto duly authorized and empowered by an Act of the Legislature of the State of New York, entitled "An Act to authorize the New York and Oswego Midland Railroad to extend its road, and to facilitate the construction thereof." Passed April 5th, 1871, being chapter 298 of the Laws of 1871;

AND WHEREAS, The said Company is now engaged in building and constructing such extension of its railroad from the village of Cortland, in the County of Cortland, to a point on the Niagara River, at or near Buffalo, and now desires to obtain the money and materials necessary to complete such extension and construction, as aforesaid, and to provide the locomotives, engines, tenders, cars, carriages, rolling-stock, materials, tools and machinery necessary for the proper equipment, operation, maintenance and conduct of its said railroads, branches, and extensions thereof, and to that end, has, by its Board of Directors, entrusted with the control and management of its corporate affairs, *Resolved* to borrow money to an amount not to exceed ten thousand dollars per mile in length of completed road, and to issue bonds for the repayment thereof, which bonds are to be of the amount and denomination severally of one thousand ($1,000) dollars and five hundred ($500) dollars each, and are to stand equally secured, according to their amount, by these presents, and are to be of the following form of bond and coupon, to wit:

[BOND OF $1,000.]

UNITED STATES OF AMERICA.

STATE OF NEW YORK.

No..... $1,000.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY.

EQUIPMENT CONVERTIBLE AND SINKING FUND MORTGAGE BOND.

SEVEN PER CENT., FREE OF U. S. GOVERNMENT TAX.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, of the State of New York, promises to pay to Elisha P. Wheeler, or to the holder

of this bond, twenty years from the date hereof, for value received, the sum 227
of one thousand dollars in lawful money of the United States, at its agency in the City of New York, and also interest thereon from date, at the rate of seven per cent. per annum, payable semi-annually, in lawful money as aforesaid, free of all United States Government tax, on the first days of April and October, in each year, upon presentation of the respective coupons hereunto annexed. If default shall be made in the payment of the interest on this bond, according to its tenor, and if such default shall continue for the period of six months, then, and in that case, the whole principal sum of this bond, together with all arrearages of interest, shall at once become due 228
and payable, anything to the contrary herein, notwithstanding.

This bond is one of a series of bonds, issued and to be issued by the said New York and Oswego Midland Railroad Company, for the equipment and completion of its road, and its several branches, and the Western Extension thereof, all bearing even date herewith, and limited to ten thousand dollars per mile of completed road, the payment whereof is secured by a mortgage on the road and its several branches, and the Western Extension thereof, equipments and all appurtenances thereto, franchises and other property in the State of New York, executed in trust for the benefit of the holders of 229
these bonds to Delos De Wolf, and bearing date the twentieth day of September, A. D. 1872. Subject, however, to prior mortgage liens of thirty thousand dollars per mile on the main line of said road and branches, and twenty-five thousand dollars per mile on the Western Extension thereof, and of one million of dollars for depot grounds, terminal facilities in the City of Buffalo, or on the Niagara River, and for other general purposes of said Company. This bond is also further secured by a sinking fund, to be set apart and reserved from the annual net income of said Company, and pledged for the redemption of these bonds to the amount of ten per cent. 230
of such net income, from the first day of October, 1875, and on the first day of October in each year thereafter, the bonds so to be redeemed to be designated by the said trustee by lot. The holder of this bond consents to its redemption by lot at par upon four weeks' public notice being given that it has been so designated for redemption, as provided in said mortgage.

This bond is convertible, at the option of the holder, into the capital stock of said Company at par, on any first day of April and October, upon surrender of the same with all the unpaid coupons not then due.

This bond shall pass by delivery or by transfer on the books of the 231
Company in the City of New York, and at any other place which the Company may determine. After a registration of ownership, certified hereon by the transfer agent of the Company, no transfer, except upon the books of the Company, shall be valid, unless the last transfer be to bearer, which shall restore transferability by delivery, but this bond shall continue subject to successive registrations and transfers to bearer, as aforesaid, at the option of each holder. On a registration of ownership, the holder may, at his

option, surrender the coupons, which will then be cancelled, and thereafter interest will be payable to the registered holder or his attorney.

In witness whereof, the said Company has caused its Corporate Seal to be hereunto affixed, and these presents to be signed by its President and attested by its Treasurer, and has also caused the coupons hereunto annexed to be signed by its Treasurer, this first day of October, A. D. 1872.

[SEAL.] Attest, WALTER M. CONKEY, *Treasurer.* D. C. LITTLEJOHN, *President.*

[CERTIFICATE.]

I HEREBY CERTIFY, That this bond is one of the issue of bonds above referred to, secured by the mortgage above mentioned, duly executed and delivered to me as Trustee, and recorded as authorized by law.

DELOS DE WOLF, *Trustee.*

$35.00. [COUPON.]

The New York and Oswego Midland Railroad Company will pay the bearer thirty-five dollars, in lawful money, at its agency in the City of New York, on the first day of April, 1873, for six months' interest on equipment, convertible and sinking fund mortgage bond

No.——— WALTER M. CONKEY, *Treasurer.*

[BOND OF $500.]

UNITED STATES OF AMERICA.

STATE OF NEW YORK.

No..... $500.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY.

EQUIPMENT CONVERTIBLE AND SINKING FUND MORTGAGE BOND.
SEVEN PER CENT., FREE OF U. S. GOVERNMENT TAX.

The New York and Oswego Midland Railroad Company of the State of New York, promises to pay to Elisha P. Wheeler, or to the holder of this bond, twenty years from the date hereof, for value received, the sum of five hundred dollars in lawful money of the United States, at its agency in the City of New York, and also interest thereon from date, at the rate of seven per cent. per annum, payable semi-annually in lawful money as aforesaid, free of all United States Government tax, on the first days of April and October in each year, upon presentation of the respective coupons hereunto annexed. If default shall be made in the payment of the interest on this bond, according to its tenor, and if such default shall continue for the period of six months, then and in that case, the whole principal sum of this bond, together with all arrearages of interest, shall at once become due and payable, anything to the contrary herein, notwithstanding.

This bond is one of a series of bonds issued and to be issued by the said 237
New York and Oswego Midland Railroad Company, for the equipment and completion of its road and its several branches, and the Western Extension thereof, all bearing even date herewith, and limited to ten thousand dollars per mile of completed road, the payment whereof is secured by a mortgage on the road and its several branches, and the Western Extension thereof, equipments and all appurtenances thereto, franchises and other property in the State of New York, executed in trust for the benefit of the holders of these bonds to Delos De Wolf, and bearing date the twentieth day of September, A. D. 1872. Subject, however, to prior mortgage liens 238
of thirty thousand dollars per mile on the main line of said road and branches, and twenty-five thousand dollars per mile on the Western Extension thereof, and of one million of dollars for depot grounds, terminal facilities in the City of Buffalo, or on the Niagara River, and for other general purposes of said company. This bond is also further secured by a Sinking Fund, to be set apart and reserved from the annual net income of said company, and pledged for the redemption of these bonds to the amount of ten per cent. of such net income from the first day of October, 1875, and on the first day of October in each year, thereafter; the bonds so to be redeemed to be 239
designated by the said trustee by lot. The holder of this bond consents to its redemption by lot at par, upon four weeks' public notice being given that it has been so designated for redemption, as provided in said mortgage.

This bond is convertible, at the option of the holder, into the capital stock of said company at par, on any first day of April and October, upon surrender of the same with all the unpaid coupons not then due.

This Bond shall pass by delivery, or by transfer on the books of the Company in the City of New York, and at any other place which the Company may determine. After a registration of ownership, certified 240
hereon by the Transfer Agent of the Company, no transfer, except upon the books of the Company, shall be valid, unless the last transfer be to bearer, which shall restore transferability by delivery, but this Bond shall continue subject to successive registrations and transfers to bearer as aforesaid, at the option of each holder. On a registration of ownership, the holder may, at his option, surrender the coupons, which will then be canceled, and thereafter interest will be payable to the registered holder or his attorney.

IN WITNESS WHEREOF, the said company has caused its Corporate 241
Seal to be hereunto affixed, and these presents to be signed by its President, and attested by its Treasurer, and has also
[SEAL.] caused the coupons hereunto annexed to be signed by its Treasurer, this first day of October, A. D. 1872,

Attest, WALTER M. CONKEY, *Treasurer.* D. C. LITTLEJOHN, *President.*

242 [CERTIFICATE.]

I HEREBY CERTIFY, That this Bond is one of the issue of bonds above referred to, secured by the Mortgage above mentioned, duly executed and delivered to me as Trustee, and recorded as authorized by law.

DELOS DE WOLF,
Trustee.

[COUPON.]

$17.50.

The New York and Oswego Midland Railroad Company will pay the
243 bearer Seventeen Dollars and Fifty Cents in lawful money, at its Agency in the City of New York, on the first day of April, 1873, for six months interest on Equipment, Convertible and Sinking Fund Mortgage Bond.

No.—— WALTER M. CONKEY,
Treasurer.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the said party of the first part, for the purpose of securing and making more sure and certain the payment of the sums of money mentioned and provided for
244 in the said bonds, bearing date October 1st, 1872, and each and every of them, with the interest theron, accruing after actual issue, according to the true intent and meaning thereof, and, in consideration of the recited premises, the loan of said money and the sum of one dollar to the said party of the first part, in hand paid by the said party of the second part, at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged by the said party of the first part, The New York and Oswego Midland Railroad Company, the party of the first part aforesaid, Has granted, bargained, sold, assigned, trans-
245 ferred and conveyed, and by these presents does grant, bargain, sell, assign, transfer and convey unto the said Delos De Wolf, as Trustee, the party of the second part aforesaid, and to his successor and successors in the trust, and to his and their assigns, all and singular the line of railroad known and to be known as the main line of road of said Company, extending from the City of Oswego, upon Lake Ontario, through the counties of Oswego, Oneida, Madison, Chenango, Otsego, Delaware, Sullivan, and Orange, to the State line of the State of New Jersey, at or near Greenwood Lake, in the county of Orange, being
246 about two hundred and seventy-one miles of road; the Cortland branch, from Cortland, in the county of Cortland, by way of Truxton and De Ruyter, to the aforesaid main line, being about forty-seven and one half miles of road; the Pecksport branch, from Pecksport, in the county of Madison, to the aforesaid main line, being about four miles of road; the New Berlin branch, from New Berlin, in the county of Chenango, to the aforesaid main line, being about twenty two and one-half miles of road; the Delhi branch, from Delhi, in the county of Delaware, to the aforesaid

main line, being about sixteen and one-half miles of road, the Monticello branch, from Monticello, in the county of Sullivan, to the aforesaid main line, being about six miles of road; the Kingston and Ellenville branch, 247
from Kingston, in the county of Ulster, by the way of Ellenville, to the aforesaid main line, being about thirty-five miles of road; and also all and singular the line of railroad known and to be known as the "Western Extension" of the New York and Oswego Midland Railroad, from the village of Cortland, in the County of Cortland, to a point on the Niagara River, at or near Buffalo, in the State of New York, being about two hundred miles of road; amounting in the aggregate to about six hundred and two and one-half miles of road; and its equipments and all appurtenances thereof, franchises and all other property connected therewith, in the 248
State of New York, TOGETHER with all and singular the lands, tracks, lines, rails, purchased, or to be purchased, bridges, viaducts, culverts, ways, rights of way, and materials, buildings, ferries and ferry-boats, piers, wharves, erections, fences, walls, fixtures, privileges, easements, rights under leases, terms and parts of terms, agreements, covenants and contracts of all and every kind, franchises, rights and interests, real estate, personal property, choses in action, leasehold and other things, of and belonging to the said party of the first part, and connected with or appurtenant to said railroad, branches, and extension thereof of every kind, nature and 249
character whatsoever, and all railway stations and depots, engine houses and machine shops, with all the appurtenances necessary or convenient for the sole, complete and entire use and operation, as well as maintenance of the said roads or railways; AND ALSO, all the locomotives, engines, tenders, cars of every kind, carriages, rolling stock, materials, tools and machinery, now owned or hereafter to be acquired by, or belonging, or appertaining to, said railroad and connected with the proper equipment, operation and conduct of the same. All of which personal chattels are hereby declared and agreed to be fixtures and appurtenances 250
of the said railroads, and are to be used and sold therewith, and not separate therefrom, and are to be taken as a part thereof. AND ALL tolls, incomes, issues and profits, to be had or derived from the same, or any part or portion thereof, or from any part or portion of said term or terms, or either thereof, and all right to receive, or recover the same.

AND TOGETHER with all improvements or additions made, or to be made to any or all of said properties, estates, railroads, or railways, and their appurtenances by said party of the first part, or by others. AND ALSO, all and every other estate, interest, property, or thing, which the said 251
party of the first part owns and holds, or may and shall hereafter acquire and hold, necessary or convenient for the use, occupation, operation and enjoyment of the aforesaid railroads, railways, leases and property, rights, privileges and franchises, or any part or portion thereof. AND ALSO, all rights and privileges to use the said road-beds, tracks, sidings,

turnouts and switches, constructed at the execution of these presents, or which may and shall be hereafter constructed, for the convenient use of said railroads, and railways, or any part thereof, as fully and as effectually as the said Company, the party hereto of the first part, is or may be, by law, entitled to have or acquire. But nothing herein contained shall be held, understood or construed, to prevent said party of the first part from selling, hypothecating, or otherwise disposing of anything received in payment of shares of capital stock, or on and for other interests; or from disposing of, by and with the consent, in writing, of the parties of the second part, any lands or other property and effects, not essential or necessary, in their judgment, to be retained for the said roadways, depots or station grounds, nor required for the construction, or convenient use of the said railroads, nor from selling shares, nor from collecting moneys due on capital stock, subscriptions or otherwise or for other things: provided the said first party shall diligently proceed to apply all such means and proceeds to the constructing, finishing, repairing and equipping of said railroads, branches and extensions thereof, and to the laying and construction of a double track for the same, whenever such double track shall, by them, be deemed necessary for the interests of said Railroad Company, and to other like necessary purposes thereof; nor from receiving and using the income from the earnings of said railroads, except so much thereof as shall by them be set apart for the purposes of a Sinking Fund to redeem these bonds, according to provision hereinafter made: provided, also, that no default shall have been made, and at the time remain in the payment of the interest or principal of any of the bonds hereby secured. But even after default in the payment of interest, the said trustee shall have full power, in his discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the persons designated by the said party of the first part, any lands acquired or held, for the purposes of stations, depots, shops or other buildings; and shall, also, have power to convey, as aforesaid, on like request, any lands or property, which, in the judgment of the said trustee, shall not be necessary for use in connection with the said railroads, or which may have been held for a supply of fuel, gravel or other material; and also to convey, as aforesaid, on like request, any lands not occupied by the track, which may become disused by reason of a change of the location of any station house, depot, shop or other building, connected with the said railroads; and such lands occupied by the track and adjacent to such station-house, depot, shop or other buildings as the said party of the first part may deem it expedient to disuse or abandon, by reason of such change, and to consent to any such change, and to such other changes in the location of the track or depot, or other buildings as shall have become expedient; and to make and deliver the conveyances necessary to carry the same into effect; but any lands which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the said trustee, upon the trusts of these

presents; and the said trustee shall, also, have full power to allow the said 257
party of the first part, from time to time, to dispose of such portions of the equipments, machinery and implements at any time held or acquired, for the use of the said railroads, as may have become unfit for such use, replacing the same by new, which shall be conveyed to the said trustee, or be otherwise made subject to the operation of these presents. TO HAVE AND TO HOLD the estate, property, rights, privileges, franchises and interests of the said party of the first part, together with all and singular the emoluments, income and advantages, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and 258
reversions, remainder and remainders, rents, issues and profits thereof, unto the said Delos De Wolf, party of the second part, and his successor and assigns, on the trusts and for the uses and purposes herein declared, and none other. PROVIDED ALWAYS that these presents are made and executed upon the express condition that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of the said bonds or obligations, intended to be secured hereby, and each and every of them, after the same shall be issued, the principal sums of money therein respectively mentioned, at the maturity thereof, according to their true intent and 259
meaning, with the interest thereon accruing, at the time, and in the way and manner, therein provided, according to the true intent and meaning of these presents, and shall, in all respects, comply with the provisions of this instrument, that then and from thenceforth, this indenture and the estate hereby granted shall cease, determine and be utterly void and of non-effect, without any other release or formal re-conveyance, re-entry, acknowledgment of satisfaction, or any other act whatsoever.

And the said party of the first part, in consideration of the premises, hereby covenants and agrees, to and with the said Delos De Wolf, his 260
successor in said trust and assigns, that the said party of the first part will, at any time or times hereafter, upon the reasonable request of the said party of the second part, his successor or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and reasonable deeds, conveyances, assignments and assurances, in the law, for the better and more effectual vesting and confirming the premises hereby granted, or intended so to be, and especially for conveying any property, subsequently to the date hereof, acquired by the said party of the first part, and comprehended in the description contained in these premises, if any 261
such there be, which shall not inure to the use and benefit of the holders of said bonds, under the terms and covenants of this indenture, to the said party of the second part, his successor and assigns, as by him or his counsel learned in the law, shall be reasonably devised, advised or required, for the better effectuating of the objects and purposes of these presents; AND FURTHER, that the said party of the first part will do and perform all the things on the part of the said first party to be done and performed, as

hereinbefore set forth, and faithfully apply all the money and other things arising from the issue of said bonds, in good faith, to the construction and equipment of the said railroads, and to putting the same into operation, and to the purposes herein recited or mentioned, as the objects thereof; AND FURTHER, that the said first party will pay unto the holder or holders of the said bonds respectively, the said principal sums of money, therein respectively mentioned, and as expressed therein, and the interest thereon, as the same shall become due and payable; AND FURTHER, that the said party of the first part hereby further covenants and agrees to and with the said party of the second part, and his successor and successors in said trust, and with the holders of each and all of the bonds, hereby secured, that out of the annual net income of said company, to be had and received from and after the first day of October, which will be in the year 1875, and annually, each and every year thereafter, the said company shall and will create and set apart a Sinking Fund, by depositing ten per cent. of such annual net income of said company, to be had and received from and after the date aforesaid, and annually thereafter until the maturity of said bonds, with the Farmers' Loan and Trust Company, or some Trust Company of the City of New York, and the said trustee shall thereupon select by lot annually, for the whole number of bonds, hereby secured, then issued and outstanding, so many thereof as such moneys shall be adequate annually to redeem, and such Sinking Fund moneys shall be thereupon applied to the redemption of said bonds, so to be drawn by lot. And in case the bonds so designated for redemption shall not be delivered up for payment and cancellation, the said trustee shall give due public notice of the numbers and denominations of the bonds which shall have been drawn by lot, and designated for redemption, by publishing the same in one newspaper of good general circulation in the City of New York, for a period of at least four weeks; and it is hereby agreed by and between the parties hereto and by and on behalf of all persons who shall or may become owners and holders of said bonds, that from and after the expiration of the said four weeks, the bonds so designated for redemption shall cease to draw interest. But the party of the first part shall have entire control over the management of said Sinking Fund, and may require ample security to be given to it by any person in charge of its moneys, or securities for safe keeping—providing, notwithstanding, that it shall be at all times competent for the said party of the first part and the holders of the bonds, secured hereby, acting by a majority in interest, to enter into any new agreement which they may deem necessary or proper for the modification of the Sinking Fund, hereby established, or any regulations in regard to the same: AND FURTHER, that in case of default in the payment of the interest on any day on which the same become due and payable, and such default continuing for a period of six months, that then, that is after the expiration of the said six months, the whole amount

of principal and interest of the bonds hereby secured, shall be deemed to 267
become, and shall be due and payable, and the said party of the first part
shall and will, on demand made by the party of the second part, his suc-
cessor or assigns, trustee for the time being, or his agent or agents, duly
authorized in writing, assign and transfer in due form to him, or to his
agent or agents so authorized, the actual possession of all the herein
granted and conveyed property and premises, and herein recited and
mentioned, or intended to be embraced in this trust: AND FURTHER,
that the expense of taking, holding and managing said property and
premises, if possession be taken, shall be paid from the income, and if 268
necessary, from the sale of the property and premises, by the said trustee
for the time being; AND FURTHER, that in such case the party of the
second part, his successor in said trust, and assigns shall and may by
himself, or his officers and agents, take and receive, collect and have the
income and profits of the said railroads and railways and other property,
first applying the same to the payment and discharge of all current neces-
sary operating expenses and repairs, including the expenses hereinbefore
mentioned, and all taxes and other similar charges; and next to the payment
of all sums of money due and payable upon the aforesaid bonds issued by 269
said party of the first part, and hereby secured, according to the tenor thereof:
AND FURTHER, that the said party of the second part, his successor in
said trust, or assigns, having entered, as hereinbefore mentioned, into
full possession of the premises, property and estate hereby conveyed (the
said default still continuing), at his or their discretion, and with the appro-
bation of the Supreme Court of said State may, or on the written request of
the holders of at least twenty per centum of the bonds hereby secured, and
then outstanding unpaid, and upon being duly indemnified against any and
all liability, damages, costs, charges and expenses by reason thereof, shall 270
proceed to sell and dispose of, or cause to be sold and disposed of, all the
premises, property, and estate hereby conveyed, or intended to be conveyed,
or so much thereof as shall be necessary to pay and discharge the principal
and interest, according to the tenor thereof, of all of such of said bonds
hereby secured and then outstanding, as may have been issued by the said
first party, and which then remain unpaid, together with all benefit and
equity of redemption of said party of the first part therein, at public
auction, in the city of New York, to the highest bidder, having previously
given public notice of the time, place and terms of said sale, and of the 271
specific property to be sold, by publishing the same in at least two
newspapers, of good general circulation, in said city, and two newspapers
in the City of Buffalo, and wherever else the said trustee may deem ex-
pedient or required by law, for a period of at least ninety days previous
to such sale; and as the attorney or attorneys of the said first party,
for that purpose, by these presents, duly constituted and appointed,
make, execute, and deliver to the purchaser, or purchasers thereof a

good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to said purchaser or purchasers, all such estate, right, property and interest, and to the same extent as the said first party had therein at the date hereof, or at any time subsequent, and also a good and sufficient transfer and assignment of said personal property, choses in action, contracts and leases, and out of the moneys arising from such sale or sales, to retain the cost and charges of advertisement of the said sale of the premises, and all other sums of money which said trustee, or his successor in said trust may have been obliged to pay by reason of his taking possession of and operating said premises, and a reasonable allowance for his own services, and for legal professional advice, aid and assistance, in effecting and consummating said possession, operation and sale; and also the principal and interest which shall then remain due and unpaid on said bonds remaining issued and outstanding, and hereby secured as aforesaid for the benefit of, and to be paid to the holders thereof, and then restore the residue of the said proceeds to the said party of the first part, it being hereby expressly understood that the bonds issued by said first party, and secured by these presents, shall be ratably received in payment of said sale by said trustee, or his successor, in case any such sale shall be made, at the option of the holder or holders thereof; and the said sale, when fully consummated, shall be a perpetual bar, both in law and equity, against the said party of the first part, and all persons claiming or to claim the premises, or any part thereof, by, through, or under said party of the first part, subsequent to the date of these presents.

AND THIS INDENTURE FURTHER WITNESSETH, that these presents, and the said bonds hereby secured, or intended to be, are made, executed and issued or delivered upon the terms, conditions and agreements following, that is to say:

First.—That the actual possession, use, management and control of all the hereinbefore granted estate, property and premises, shall be and remain in and with the said party of the first part, so long as the bonds so issued shall be and remain without default or forfeiture.

Second.—That the said bonds shall be countersigned by the said party of the second part, and that the said party of the second part is hereby authorized and directed to issue bonds and to deliver over the same to said party of the first part, to such an amount only as shall be at and after the rate of ten thousand dollars in bonds per mile of said railroad, so fast as the track of said railroad shall be graded, the iron rails laid thereon and the same placed in running order, and no faster.

Third.—That in case of any vacancy in the said trusteeship, by the incapacity to act, death, or resignation of the said trustee, or from any other cause, all his estate, right, interest, power, and control shall be

thereupon divested, and cease and determine, and the said Company, 277
party of the first part, and the holders of not less than forty per cent. in amount of the bonds hereby secured, and then outstanding, shall select a new Trustee to fill the vacancy thereby created; and in case of disagreement between said Company and the aforesaid holders of the said bonds, then, and in that case, the holders of not less than fifty per centum in amount of the said bonds hereby secured, may, upon due notice to said party of the first part apply to the Circuit Court of the United States for the District of New York, or to any other Court of competent jurisdiction for any Judicial District, in 278
which any part of the aforesaid railroad may be situate, to appoint a new trustee to supply the vacancy, and such proceedings may be had, and appointments and selections made, as often as the like occasion may require the appointment of a trustee to execute the trust herein declared; and when so selected, such new trustee shall thereupon become vested for the purposes of the said trust, with all the estate, rights, interests, power, property, or control, hereby conveyed or granted to, or vested in the said Delos De Wolf, by these presents, without any further assurance, grant or conveyance of the same, as 279
fully and effectually as if such appointment had been originally made herein. But if the same shall be necessary, both the said party of the first part, and such new trustee, or either of them, shall make, execute, and deliver all necessary conveyances, and agreements, and grants, and powers, and authorities, for that purpose.

AND IT IS FURTHER understood and agreed, by and between the parties to these presents, that the said party of the second part, his successor or successors in said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts or 270
negligences of any agent or agents necessarily employed by him or them, when such agent or agents are selected with proper discretion, or with the approbation of the said party of the first part. And the officers of the said Railroad Company shall have, at all times, the right to inspect the books kept by the receivers of the road and their agents.

AND THIS INDENTURE FURTHER WITNESSETH, that the said party of the second part hereby accepts the aforesaid trusts, and also covenants and agrees, to and with the said party of the first part, to execute the same upon the terms and conditions hereinbefore, as well as hereinafter mentioned and 281
provided, and which said terms and conditions are hereby mutually agreed to and upon by both parties to these presents.

IN TESTIMONY WHEREOF, the said party of the first part, in pursuance of authority given by law, and in conformity with the order of its Board of Directors, has caused this indenture to be signed by De Witt C. Littlejohn, its President, and Walter

M. Conkey, its Treasurer, and the corporate seal of the Company to be affixed thereto, and the party of the second part has hereunto subscribed his name and affixed his seal the day and
282 year first in this indenture written.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY.

By

D. C. LITTLEJOHN, *President.*
[COMPANY SEAL.] W. M. CONKEY, *Treasurer.*
DELOS DE WOLF, *Trustee.* [SEAL.]

The Bonds secured by this Mortgage are duly stamped, in compliance with the Internal Revenue law of the United States.

Signed, sealed and delivered
in the presence of

283 STATE OF NEW YORK, }
COUNTY OF OSWEGO. } *ss:*

On this 19th day of October, one thousand eight hundred and seventy-two, before me, the undersigned, personally came De Witt C. Littlejohn, the President, and Walter M. Conkey, the Treasurer of the New York and Oswego Midland Railroad Company, of the State of New York, with each of whom I am personally acquainted, who, being by me severally and duly sworn, doth each for himself severally depose and say: That the said De Witt C. Littlejohn resides at Oswego, in the County of Oswego;
284 that he is the President of the New York and Oswego Midland Railroad Company; that the said Walter M. Conkey resides at Norwich, in the County of Chenango; that he is the Treasurer of the New York and Oswego Midland Railroad Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such Corporate Seal; that it was thereto affixed by order of the Board of Directors of said Company; that the said De Witt C. Littlejohn signed his name thereto by the like order, as President, and that the said Walter M. Conkey signed his name thereto by the like order, as Treasurer of said Company.

285 And on the 19th day of October, one thousand eight hundred and seventy-two, also personally appeared before me Delos De Wolf, to me known to be the same person described in, and who executed the foregoing instrument, and he acknowledged that he had executed the same for the purposes therein mentioned.

THEO. HOUSTON,
[NOTARY SEAL.] *Notary Public in and for said County.*

STATE OF NEW YORK, COUNTY OF } ss.: 286

I, John J. Stevens, Clerk of the County of Oswego, and also Clerk of the Supreme Court for the said Oswego County, the same being a Court of Record, do hereby certify that Theodore Houston, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the County of Oswego, dwelling in the said County, commissioned and sworn and duly authorized to take the same. And, further, that I am well acquainted with the 287 handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 19th day of October, one thousand eight hundred and seventy-two.

[COURT SEAL.]

JOHN J. STEVENS, *Clerk.*

5 Cent U. S. Int. Rev. Stamp. cancelled.

SCHEDULE E.

THIS INDENTURE, made the first day of September, A. D. 1873, by and between the NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, a corporation formed and existing under and by virtue of the laws of the 288 State of New York, party of the first part, and THE MERCANTILE TRUST COMPANY, Trustee, party of the second part, Witnesseth:

WHEREAS the New York and Oswego Midland Railroad Company, the party hereto of the first part, is a Corporation duly created and existing under the laws of the State of New York, and possesses and owns a line of railroad built and to be built, extending from a point in the County of Orange, in the State of New York, upon the boundary line between the States of New York and New Jersey, to the City of Oswego, and to the City of Buffalo, or a point upon the Niagara River, with several branch railroads 289 in the said State of New York; and has certain leases, or agreements of lease, of other railroads in the States of New York and New Jersey; and has power to mortgage the said railroads with all other property and franchises owned by it, for the purpose of securing bonds issued by it.

AND WHEREAS, for the purpose of more fully funding the indebtedness of the said Company, and of discharging all liens upon its property, and of providing for the completion of all unfinished portions of the said

railroad, and of providing a fuller equipment of the said railroad, and of other legitimate expenditures of the said party of the first part, it has been duly and legally resolved to borrow money by means of mortgage bonds, and to issue and sell such bonds to an amount not exceeding in the aggregate the sum of thirty-five million dollars ($35,000,000), and that such bonds should be secured by a mortgage or deed of trust in the terms hereof, conveying all the property and franchises of the said party of the first part, now held or hereafter acquired, to the party hereto of the second part in trust for that purpose, and that such bonds should be substantially in manner and form, as follows, that is to say:

UNITED STATES OF AMERICA.

STATE OF NEW YORK.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY.

$1,000.] CONSOLIDATED MORTGAGE BOND. [£200.

The New York and Oswego Midland Railroad Company hereby acknowledges itself indebted to the Mercantile Trust Company as Trustee in the sum of one thousand dollars; which sum it promises to pay to it or to the holder of this Bond, on the first day of September, A. D. 1903, in gold coin of the United States, at the agency of the Company, in the City of New York, or at the option of the holder, two hundred pounds, British sterling money, at the agency of the Company in the City of London, with interest thereon, at the rate of seven per centum per annum, in gold, as aforesaid, free of United States Government tax; such interest to be payable, at its office or agency, either in New York in United States gold coin, or in London in British sterling, as specified in the annexed coupons.

In case of default in the payment of interest upon this Bond, such default continuing for the period of four months, the principal hereof, shall thereupon become due and payable in the manner and with the effect provided in the deed of trust hereinafter mentioned.

This Bond is one of a series of bonds, amounting in the aggregate to thirty-five millions of dollars; all of which Bonds are of like tenor herewith, except in amount.

The payment of the said series of Bonds is equally and ratably secured by a Trust Deed or mortgage, of even date herewith, made by the said New York and Oswego Midland Railroad Company to The Mercantile Trust Company as Trustee, and conveying to such Trustee among other things the entire railroad of the said Company in the State of New York, with all branches, as more fully set forth in the said Deed of Trust, together with the franchises, privileges, tolls and income, property and profits of the said Company.

Sufficient bonds of this issue having been deposited in trust to equal the amount of all prior outstanding bonds of this Company, this series of

Consolidated Mortgage Bonds represents the only and entire funded debt of 295
the New York and Oswego Midland Railroad Company.

This bond shall not become obligatory until authenticated by the signature of the trustee.

In testimony whereof, the said Company has caused its corporate seal to be hereunto affixed, and these presents to be executed by its President, and attested by its Secretary, this first day of September A. D. 1873.

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY.

By

296

President.

Attest:

Secretary.

[COUPON.]

$35.] [£7.

On the first day of March, A. D. The New York and Oswego Midland Railroad Company will pay the bearer in the City of New York, thirty-five dollars, gold coin, or in London, seven pounds sterling, being six months' interest due that day on bond 297

No.———

Secretary.

And that it is understood, however, that the party of the first part may have any of the said bonds or their coupons stamped with words and devices indicating that interest thereon is payable on such bonds only in the City of New York, and that after such stamping such interest shall be payable only in the City of New York.

And that it is understood also, that, upon a portion of such bonds, 298
interest shall be made payable on the first days of March and September in each year; on a portion on the first days of January and July, in each year; and on a portion, on the first days of May and November, in each year; and that any one or more of such bonds may be for other amount or amounts than $1,000, in which case the coupons shall be for proportional amounts; and that any bond or bonds for larger amounts than $1,000 shall be convertible into bonds of $1,000 each, in such manner as the party of the first part shall prescribe.

And that such bonds should have the following endorsement placed 299
upon the back thereof:

"This bond may be registered, in the owner's name, on the Company's books, in the City of New York, or at any other place which the Company may determine, such registry being noted on the bond by the Company's transfer agent; after which no transfer shall be valid unless made on the Company's books by the registered owner and similarly noted on the bond, but the same may be discharged from registry by being transferred to bearer,

after which it shall be transferable by delivery, but it may be again registered as before."

"The registry of the bond as above shall not restrain the negotiability of the coupons by delivery merely; but the coupons may be surrendered, and the interest made payable only to the registered owner of the bond."

And that such bonds should be duly executed by and under the seal of the said party of the first part, signed and attested by its President and Secretary, and the coupons authenticated by or with the name of the said Secretary.

And that such bonds should, after such execution, be delivered to the said party of the second part, who shall, within the terms hereof, sign the following certificate:

The Mercantile Trust Company hereby certifies that this bond is one of a series of bonds amounting in the aggregate to the sum of thirty-five million dollars, secured by the deed of trust therein mentioned, dated 1st September, 1873, and executed by The New York and Oswego Midland Railroad Company, purporting to convey to the said The Mercantile Trust Company, as Trustee, all the railroads and property of the said Railroad Company, as by reference thereto will more fully appear, and that the said deed of trust has been duly recorded as required by law.

THE MERCANTILE TRUST COMPANY,
By .....
President. } *Trustee.*

And that such certificate upon each bond, so signed by the Trustees, shall be sole and conclusive proof that the said bond is secured by this indenture.

AND WHEREAS it was further resolved, by the said party of the first part, that, of the bonds to be issued as aforesaid, there should be reserved and placed in trust a sufficient number to be exchanged at par for all the oustanding bonds issued by the party of the first part, to the end that the total amount of first mortgage bonds upon the railway and property of the party of the first part should not exceed the amount of thirty-five million dollars.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the party of the first part, in consideration of the premises, and of one dollar to it in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid, issued or to be issued as herein recited and provided, and every part of the said principal and interest, as the same shall become payable, according to the tenor of the said bonds, and of the coupons or interest-warrants thereto attached, has granted, bargained and sold, assigned, set over, aliened, enfeoffed, released, conveyed and confirmed, and by these presents does

grant, bargain, sell, transfer, assigns, set over, alien, enfeoff, release, convey 305
and confirm, unto the party of the second part, and to its successrs and
assigns, upon the trust hereby created, all the railroad and railroads now
owned or hereafter acquired by the said party of the first part within the
State of New York, and more especially the line of railroad, as now con-
structed, or hereafter to be constructed, extending from the City of Oswego,
upon Lake Ontario, through the Counties of Oswego, Oneida, Madison,
Chenango, Otsego, Delaware, Sullivan and Orange, to the State line of the
State of New Jersey, at or near Greenwood Lake, in the County of Orange,
being about two hundred and seventy-one miles of road; the Cortland 306
branch, from Cortland, in the County of Cortland, by way of Truxton and
De Ruyter, to the aforesaid main line, being about forty-seven and one-
half miles of road; the Pecksport branch, from Pecksport, in the County
of Madison, to the aforesaid main line, being about four miles of road; the
New Berlin branch, from New Berlin, in the County of Chenango, to the
aforesaid main line, being about twenty-two and one-half miles of road;
the Delhi branch, from Delhi, in the County of Delaware, to the aforesaid
main line, being about sixteen and one-half miles of road; the Monticello
branch, from Monticello, in the County of Sullivan, to the aforesaid main 307
line, being about six miles of road; the Kingston and Ellenville branch,
from Kingston, in the County of Ulster, by the way of Ellenville, to the
aforesaid main line, being about thirty-five miles of road; and also all and
singular the line of railroad known and to be known as the "Western
Extension" of the New York and Oswego Midland Railroad, from the
Village of Cortland, in the County of Cortland, to a point on the Niagara
River, at or near Buffalo, in the State of New York, being about two
hundred miles of road; amounting in the aggregate to about six
hundred and two and one-half miles of road. And also a certain lease of a 308
railroad running from the City of Middletown, in the County of Orange, to
Unionville, in the County of Orange; and also all leases or agreements of
or for leases of railroads in the State of New Jersey, made or to be made,
especially of the New Jersey Midland Railroad, and of the Montclair
Railway, in the said State; and all other branches or extensions of any of
the above described railroads built, or to be built; and all other leases or
contracts relating to or affecting the use of other railroads, in the State of
New York, or the State of New Jersey, now or hereafter obtained or owned
by the party of the first part, and all the railroads, franchises and property 309
mentioned in the said leases and agreements, and each and every of them.

AND also all bridges, rights-of-way, lands, depot grounds, depots,
station-houses, engine-houses, car houses, freight-houses, car or machine-
shops, or other buildings, all fences, trestles, and culverts appertaining to
the railroads above conveyed, and all kinds of machinery and tools now
held or hereafter acquired for use in connection with the said railroads,
together with all locomotives, engines, tenders, passenger or freight cars,

and all other rolling stock or equipment, and all fuel and all material, now held or hereafter acquired, for the construction, operating, repairing or replacing the said railroad. And all franchises, rights, privileges, things in action, contracts, claims and demands of the said party of the first part, now held or hereafter acquired by it, in connection with or relating to the said railroads, or either or any of them; together with all and singular the tenements and appurtenances thereunto belonging, and the reversions, remainders, tolls, incomes, rents, issues and profits thereof; and also all the estates, rights, titles and interests whatsoever, as well at law as in equity, of the said party of the first part, of, in and to the same.

TO HAVE AND TO HOLD all and singular the premises, rights, franchises, property, real and personal, aforesaid, with the appurtenances, unto the said The Mercantile Trust Company, the party of the second part, and its successor or successors in the trusts and assigns; in trust, however, for the person or persons, firm or firms, and bodies politic or corporate, who have heretofore, or shall hereafter, at any time, become and be, from time to time, the purchasers or holders or owners of the said bonds, or any or either of them, and for the purposes and on the conditions herein expressed; subject, however, to the possession and management of said railways and property, including rents, incomes, issues, and profits aforesaid, by said party of the first part, its successors or assigns, so long as no default shall be made in the payment of either principal or interest of the bonds, or any of them, and so long as said party of the first part shall well and truly observe, keep and perform all and singular the covenants and conditions in said bonds, and in this indenture expressed, to be observed, kept or performed by or on behalf of said party of the first part.

And it is declared that the trusts, uses, purposes and conditions upon which the premises, rights, franchises and property, real and personal, aforesaid, are conveyed to, and are to be had, held and disposed of by the said party of the second part, are as follows, that is to say:

ARTICLE I.

The party of the first part shall make and execute, and the Trustee, party of the second part, shall certify or countersign of the bonds to be secured hereby an aggregate amount of thirty-five million dollars, and no greater amount of such bonds shall be issued by the party of the first part or countersigned by the said Trustee.

ARTICLE II.

Upon the execution and delivery of these presents the party of the first part shall make and execute, and the party of the second part shall certify or countersign, pursuant to the provisions of this indenture, a number and amount at par of the bonds intended to be secured hereby equal to the amount at par of all outstanding bonds secured by mortgage upon the

railroad and railroads of the party of the first part, which amount shall be evidenced by the statement of the President of the said party of the first part, verified by the affidavit of the Secretary of the party of the fiast part, 315
and which statement, so verified, shall be conclusive evidence of the amount so issued; and these bonds so executed and certified, shall be retained in the possession of the party of the second part, and shall be held by it, or by such corporation or persons as may from time to time be agreed upon by and between the parties of the first and second part, in trust and solely for the purpose of receiving in exchange therefor the aforesaid outstanding prior bonds in the manner following:

Upon the presentation by any person or persons, or bodies corporate, to the said Trustee, of any of the said outstanding bonds amounting, at par, 316
to any number of even thousands of dollars, it shall be the duty of the said Trustee, upon the, terms, from time to time, required by the party of the first part, to exchange for said bonds the bonds of this issue at par, using such portion of the bonds so retained by said party of the second part, as shall be required for that purpose, and thereupon causing the said outstanding bonds to be assigned to the said party of the second part in trust for the benefit of the holders of the bonds secured hereby. Provided, however, no holder of any of the aforesaid outstanding bonds shall have a right to require such exchange unless the Board of Trustees of the party of the 317
first part shall by a resolution then in force have requested the said Trustee to make such exchange, and have fixed the terms of such exchange.

And further provided, that every bond secured hereby, which shall be issued as above provided in exchange for any outstanding prior bond, shall, before it shall become binding on the party of the first part, or shall become negotiable by delivery or registration, have endorsed thereupon a certificate, signed by such person as the President of the party of the first part, acting with the said Trustee, shall from time to time appoint for that purpose, with the designation of "Exchange Agent," which certificate shall be in the 318
following words, to wit:

"This is to certify that the within bond has been issued in exchange for Bond No. of the Company, which bond has been delivered to the Trustee.

"Dated at the day of 18 .

"*Exchange Agent.*"

It is expressly understood, that no more of the bonds intended to be 319
secured hereby shall be executed by the party of the first part, or certified by the party of the second part, until sufficient bonds are so as above reserved to be exchanged at par for all outstanding bonds issued by the party of the first part, and secured by mortgage, remaining a lien of record upon some portion of the property hereby conveyed.

and all other rolling stock or equipment, and all fuel and all material, now held or hereafter acquired, for the construction, operating, repairing or replacing the said railroad. And all franchises, rights, privileges, things in action, contracts, claims and demands of the said party of the first part, now held or hereafter acquired by it, in connection with or relating to the said railroads, or either or any of them; together with all and singular the tenements and appurtenances thereunto belonging, and the reversions, remainders, tolls, incomes, rents, issues and profits thereof; and also all the estates, rights, titles and interests whatsoever, as well at law as in equity, of the said party of the first part, of, in and to the same.

TO HAVE AND TO HOLD all and singular the premises, rights, franchises, property, real and personal, aforesaid, with the appurtenances, unto the said The Mercantile Trust Company, the party of the second part, and its successor or successors in the trusts and assigns; in trust, however, for the person or persons, firm or firms, and bodies politic or corporate, who have heretofore, or shall hereafter, at any time, become and be, from time to time, the purchasers or holders or owners of the said bonds, or any or either of them, and for the purposes and on the conditions herein expressed; subject, however, to the possession and management of said railways and property, including rents, incomes, issues, and profits aforesaid, by said party of the first part, its successors or assigns, so long as no default shall be made in the payment of either principal or interest of the bonds, or any of them, and so long as said party of the first part shall well and truly observe, keep and perform all and singular the covenants and conditions in said bonds, and in this indenture expressed, to be observed, kept or performed by or on behalf of said party of the first part.

And it is declared that the trusts, uses, purposes and conditions upon which the premises, rights, franchises and property, real and personal, aforesaid, are conveyed to, and are to be had, held and disposed of by the said party of the second part, are as follows, that is to say:

ARTICLE I.

The party of the first part shall make and execute, and the Trustee, party of the second part, shall certify or countersign of the bonds to be secured hereby an aggregate amount of thirty-five million dollars, and no greater amount of such bonds shall be issued by the party of the first part or countersigned by the said Trustee.

ARTICLE II.

Upon the execution and delivery of these presents the party of the first part shall make and execute, and the party of the second part shall certify or countersign, pursuant to the provisions of this indenture, a number and amount at par of the bonds intended to be secured hereby equal to the amount at par of all outstanding bonds secured by mortgage upon the

railroad and railroads of the party of the first part, which amount shall be evidenced by the statement of the President of the said party of the first part, verified by the affidavit of the Secretary of the party of the fiast part, 315
and which statement, so verified, shall be conclusive evidence of the amount so issued; and these bonds so executed and certified, shall be retained in the possession of the party of the second part, and shall be held by it, or by such corporation or persons as may from time to time be agreed upon by and between the parties of the first and second part, in trust and solely for the purpose of receiving in exchange therefor the aforesaid outstanding prior bonds in the manner following:

Upon the presentation by any person or persons, or bodies corporate, to the said Trustee, of any of the said outstanding bonds amounting, at par, 316
to any number of even thousands of dollars, it shall be the duty of the said Trustee, upon the terms, from time to time, required by the party of the first part, to exchange for said bonds the bonds of this issue at par, using such portion of the bonds so retained by said party of the second part, as shall be required for that purpose, and thereupon causing the said outstanding bonds to be assigned to the said party of the second part in trust for the benefit of the holders of the bonds secured hereby. Provided, however, no holder of any of the aforesaid outstanding bonds shall have a right to require such exchange unless the Board of Trustees of the party of the 317
first part shall by a resolution then in force have requested the said Trustee to make such exchange, and have fixed the terms of such exchange.

And further provided, that every bond secured hereby, which shall be issued as above provided in exchange for any outstanding prior bond, shall, before it shall become binding on the party of the first part, or shall become negotiable by delivery or registration, have endorsed thereupon a certificate, signed by such person as the President of the party of the first part, acting with the said Trustee, shall from time to time appoint for that purpose, with the designation of "Exchange Agent," which certificate shall be in the 318
following words, to wit:

"This is to certify that the within bond has been issued in exchange for Bond No. , of the Company, which bond has been delivered to the Trustee.

"Dated at the day of 18 .

"*Exchange Agent.*"

It is expressly understood, that no more of the bonds intended to be 319
secured hereby shall be executed by the party of the first part, or certified by the party of the second part, until sufficient bonds are so as above reserved to be exchanged at par for all outstanding bonds issued by the party of the first part, and secured by mortgage, remaining a lien of record upon some portion of the property hereby conveyed.

320 ARTICLE III.

In case that any of the said outstanding prior bonds shall not have been so as above exchanged before one year prior to their maturity, then it shall be the duty of said trustee to sell an equal amount of the bonds secured hereby and deposited with it, and to use the proceeds of the same, together with such amount as it shall be necessary for the party of the first part to contribute to supply any deficiency, to procure the exchange or retiring of such outstanding bonds at maturity. And, upon the payment, redemption or exchange of all of said outstanding bonds, the said trustee shall account
321 with the party of the first part for the said bonds secured hereby, or the proceeds thereof, if sold, and pay over to the said party of the first part any portion of the same not necessarily or legitimately used under the aforesaid trust.

ARTICLE IV.

Until default shall be made in the payment of principal or interest of the said bonds or some of them, or until default shall be made in respect to something by these presents required to be done, observed, performed or
322 kept by the party of the first part, the said party of the first part shall be suffered and permitted to possess, manage, operate and enjoy the said hereinbefore described franchises, property and railways, and every part thereof, with the equipments thereof and the appurtenances thereunto belonging, and to take and use the tolls, incomes, rents, issues and profits thereof, in the same manner and with the same effect as if this deed had not been made.

ARTICLE V.

323 If the party of the first part shall well and truly pay the principal of the said bonds and every of them, and all interest thereon, when the same shall become payable, according to the tenor of the said bonds, and the coupons issued therewith, and shall well and truly observe, perform and keep all and singular the several things herein required to be by it performed or kept, according to the true intent and meaning of these presents, then and in that case all the estate, right, title and interests of the said party of the second part and its successor or successors in the trust hereby created, shall cease, determine and become void, otherwise the same shall be and remain in full force and virtue.

324

ARTICLE VI.

In case default shall be made in the payment of any interest on any of the aforesaid bonds, issued or to be issued according to the tenor thereof, or of the coupons thereto annexed, or in any requirements to be done or kept by the party of the first part, and in case such default shall continue for the period of three months, it shall be lawful for the said trustee, the party of

the second part, personally, or by its attorney or agent, to enter into or upon 325
all and singular the railroad and premises hereby conveyed, or intended so to be conveyed, and each and every part thereof, and to have, hold and use the same, operating, by its superintendents, managers, receivers or servants, or other attorney or agent, the said railroad, and conducting the business thereof, and making from time to time all repairs and replacements, and such useful alterations, additions and improvements thereto as may seem to it to be judicious; and collect and receive all tolls, freights, incomes, rents, issues and profits of the same, and of every part thereof, and, after deducting the expenses of operating the said railroad and conducting its 326
business, and of all the said repairs, replacements, alterations, additions and improvements, and all payments which may be made for taxes, assessments, charges or liens, prior to the lien of these presents, upon the said railroad and premises, or any part thereof, to apply the moneys arising as aforesaid to the payment of interest upon said bonds, in the order in which such interest shall have become or shall become due, ratably to the persons holding the coupons evidencing the right to such interest; and, after paying all interest which shall have become due, to apply the same to the satisfaction of the principal of the said bonds which may be at that time due and un- 327
paid, ratably, and without discrimination or preference.

ARTICLE VII.

In case default shall be made as aforesaid, or in case default shall be made in the payment of the principal of any of the said bonds, or any part thereof, and in case any such default shall continue for the period of four months, it shall be lawful for the said trustee, the party of the second part, after entry as aforesaid, or other entry, or without entry, personally, or by 328
its attorney or agent, to foreclose the equity of redemption to the property hereby conveyed, by judicial intervention or legal proceedings, or to sell and dispose of all and singular the railways and premises hereby conveyed, or intended so to be, or of any part of the same, from time to time, at public auction, in the City of New York, and at such time or times as it may appoint, having first given notice of the time and place of such sale or sales, by advertisement, to be published not less than three times a week, for six weeks, in one or more newspapers in the Cities of New York, Albany, Oswego and Buffalo respectively, and wherever else required by 329
law, and to adjourn the said sale or sales from time to time, in its discretion; and, if so adjourning, to make the same at the time and place to which the same may be so adjourned, and, upon any such sale, to make and deliver to the purchaser or purchasers of the property so sold, good and sufficient deed or deeds in the law for the same; which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the party of the first part, and all other persons whomsoever, lawfully claiming

330 or to claim the said railroad and premises so sold, or any part thereof, by, from, through or under it; and, after deducting from the proceeds of any such sale just allowances for all disbursements and expenses of the said sale, including attorneys and counsel fees, and all other expenses, advances or liabilities which may have been made or incurred by the said trustee in operating and maintaining the said railroad, or in managing its business while in possession, and all payments which may have been made by them for taxes or assessments on the said premises, or any part thereof, as well as compensation for its own services, to apply the said proceeds to the
331 payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, ratably, to the aggregate amount of such unpaid principal and accrued and unpaid interest; and, if, after satisfaction thereof, a surplus of the said proceeds shall remain, to pay over the same to the said party of the first part, or to whomsoever may be lawfully or equitably entitled to receive the same, or as some Court of competent jurisdiction shall direct. And it is hereby
332 declared, that the receipt of the said trustee shall be a sufficient discharge to the purchaser or purchasers of the premises for his or their purchase money, and that such purchaser or purchasers, his or their heirs, executors, administrators or assigns, shall not, after payment thereof and having such receipts, be liable to see to its being applied upon or for the trusts and purposes of these presents, or in any manner whatsoever be answerable for any loss, misapplication or non-application of such purchase-money, or any part thereof, or be obliged to inquire into the necessity, expediency or authority of or for any such sale.

333 ARTICLE VIII.

In case default shall be made in the payment of any of the said coupons, or semi-annual interest upon any of the aforesaid bonds, at the time and in the manner in the coupons issued therewith, provided the said coupon has been presented and the payment of the interest therein specified has been demanded, and in case such default shall continue for the period of four months after the said coupon shall have become due and payable, then and thereupon the principal of all the bonds secured hereby shall at
334 the election of the trustee, the party of the second part, become immediately due and payable, anything contained in the said bonds to the contrary notwithstanding; but a majority in interest of the holders of said bonds may by an instrument in writing signed by such majority before the interest in arrears shall be paid, instruct the trustee to declare the said principal to be due, or to waive the right so to declare, on such terms and conditions as such majority shall deem proper, or may annul or reverse the election of the trustee, provided that no action of the trustee or bondholders

shall extend to or be taken to affect any subsequent default or to impair 335
the rights resulting therefrom.

ARTICLE IX.

The party of the first part shall, from time to time, and at all times hereafter, and as often as thereunto requested by the trustee, the party of the second part, execute, deliver and acknowledge all such further deeds, conveyances and assurances in the law for the better assuring the trustee upon the trusts herein expressed, the said railways and the equipments and appurtenances hereinbefore mentioned or intended so to be conveyed, and 336
all franchises and other property now held or thereafter acquired, as by the trustee, or by its counsel learned in the law, shall be reasonably advised, devised or required.

ARTICLE X.

The trustee shall have full power, in its discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the persons designated by the said Company, any lands acquired in any way, or held for sale, or for the purposes of stations, depot shops or other buildings, or which may have been held for a supply of fuel, gravel or 337
other materials; provided, however, in each case that in the judgment of the trustee such land shall not be necessary or material for present or future use in connection with the said railways; and also to convey, as aforesaid, on like request, any lands not occupied by the track which may become disused by reason of a change of the location of any station-house, depot shop or other building as the said Company may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change and to such other changes in the location of the track or depot, or other buildings, as in its judgment shall have become expedient, and to make and 338
deliver the conveyances necessary to carry the same into effect; but any lands which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the trustee upon the trusts of these presents, and no property shall be released or conveyed which, in the judgment of the said trustee shall be essential or material to the security of the holders of the aforesaid bonds; and the trustee shall also have full power to allow the said Company from time to time to dispose of, according to its discretion, such portions of the equipments, machinery, and implements, at any time held or acquired for the use of the said railroad, as may have become unfit 339
for such use, replacing the same by new, which shall then become subject to the operation of these presents and which shall be expressly conveyed to said trustee, subject to such operation, on its demand.

ARTICLE XI.

At any sale of the aforesaid property, or any part thereof, made to enforce the lien created by these presents pursuant to the power therein

granted, or by judicial authority, the said trustee may bid for and purchase, or cause to be bid for and purchased, the property so sold on behalf of all the holders of the bonds secured hereby, then outstanding, in the proportion of the respective interests of such holders; provided that if all the property hereby conveyed be sold as aforesaid, the price at which the purchases herein authorized may be made shall not exceed the whole amount of the bonds then outstanding, with the interest accrued thereon, in behalf of which the said purchases shall be made; and if but a portion of the said property shall be sold it shall be at such price as shall be in the judgment of the trustee reasonable.

ARTICLE XII.

It is hereby declared and agreed that it shall be the duty of the trustee, upon proper indemnification against costs and expenses, to execute the power of entry hereby granted, or the power of sale hereby granted, or both, or to take appropriate proceedings in equity or at law to enforce the rights of the bondholders under these presents upon requisition, in writing, as hereinafter specified, viz.:

1. If the default be as to the interest or principal of any of the bonds aforesaid, such requisition upon the said trustee shall be by holders of not less than twenty-five per centum of the said bonds then outstanding; and upon such requisition it shall be the duty of the trustee to enforce the rights of the bondholders under these presents by entry, sale or legal proceedings as it, being advised by counsel learned in law, shall deem most expedient for the interest of all the holders of the said bonds.

2. If the default shall be in the omission to comply with any other provision herein contained to be performed or kept by the said company, then, and in such case the requisition shall be by the holders of fifty per centum of the bonds then outstanding.

But it is expressly understood that such duty of the trustee shall be at all times subject to the power hereby declared of a majority in interest of the holders of the said bonds by requisition in writing, signed by such majority, to instruct the said trustee to waive such default, or upon adequate indemnity, as aforesaid, to enforce their rights by reason thereof; provided that no action of the trustee or bondholders, or both, in waiving such default or otherwise, shall extend to or be taken to affect any subsequent default, or to impair the results arising therefrom.

ARTICLE XIII.

It is hereby expressly agreed that in case of the dissolution of the party of the second part or its resignation, incapacity or removal as trustee

hereunder, then and in that case it shall be the duty of the Secretary of 345
the party of the first part to call a meeting of the bondholders by printed notice, published in two of the public newspapers of the City of New York, calling such meeting of the bondholders to be held in said City, not less than thirty days after the first publication of said notice, for the purpose of filling the place of such trustee.

At the time and place specified in such notice the holders of said bonds, at such meeting shall proceed to select a suitable person or persons or corporation to act as such trustee, to fill said vacancy; and a majority in interest of said bondholders so attending said meeting, or legally 346
represented thereat, shall be competent to elect a new trustee; and the person or persons or corporation so elected shall immediately on such election, and on his, or their, or its acceptance in writing of such trust, become vested with all the estate, trust, rights, powers and duties of the party of the second part as prescribed herein.

And in case of such election as aforesaid, the said party of the first part hereby covenants to make, execute and deliver such other or further instruments, deeds, indentures or assurances, as may be necessary to enable the person or persons or corporation so elected or duly appointed by com- 347
petent authority to execute the trusts hereby created and declared as fully and perfectly, in all respects, as he or they or it could have executed the same, if originally made a party or parties of the second part to this indenture.

ARTICLE XIV.

It is mutually agreed that the term or words "trustee" and said "trustee," as used in this indenture, shall be held and construed to mean the trustee or trustees for the time being.

348 And it is further agreed, that at all times until said bonds shall be paid, with the interest due and to grow due thereon, the party of the part will permit the trustee, or its agents, clerks or attorneys for that purpose, to be duly authorized fully to inspect all the books of account of the party of the first part, together with its books, reports, memoranda or other papers, and to take such extracts therefrom as may be deemed expedient.

ARTICLE XV.

It is further agreed, that the said trustee shall not be answerable for 349
any error or mistake made by it in good faith, but only for gross negligence or willful default in the discharge of its duties as such trustee.

In testimony whereof, the said party of the first part has caused these presents to be executed by its President, and attested by its Secretary, and its corporate seal to be hereunto annexed; and the party of the second part has signified its acceptance of the trust by causing these presents to be

350 executed by its President and Treasurer, and its corporate seal to be hereunto annexed, the day and year first above mentioned.

(Signed,)

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY

By GEORGE OPDYKE,
President.

Attest:

THEO. HOUSTON,
Secretary.

[SEAL OF COMPANY.]

351 THE MERCANTILE TRUST COMPANY,

By THOS. U. SMITH, *President.* } *Trustee.*

Attest:

ELBERT B. MONROE,
Treasurer.

[SEAL OF COMPANY.]

CIRCUIT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

Between JOHN G. STEVENS, CHARLES W. OPDYKE, and ABRAM S. HEWITT,
Complainants,
352
and
THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY and others,
Defendants.

An order having been granted in this suit, returnable on the fifteenth day of November, eighteen hundred and seventy-three, to show cause why 353
a Receiver, or Receivers, of the property, effects, rights, and franchises of The New York and Oswego Midland Railroad Company, should not be appointed, as prayed for in the Bill of Complaint, the hearing of which order was adjourned until this eighteenth day of November, 1873, and it appearing to the Court that Abram S. Hewitt, one of the complainants herein, is now in possession of the said property, effects, rights, and franchises, as Receiver, under an order of this Court, bearing date the eighteenth day of September, 1873, appointing him such Receiver in a certain cause now pending in this Court, wherein the said Abram S. Hewitt, as Trustee, is 354
complainant, and the said The New York and Oswego Midland Railroad Company and others, are defendants. And it further appearing that by order this day made, upon the petition of the said Abram S. Hewitt, in said cause, John G. Stevens, one of the complainants in this cause, has been appointed Receiver with him in the said cause, wherein the said Abram S. Hewitt is complainant, and the said The New York and Oswego Midland Railroad Company and others, are defendants; and after hearing Mr. Ashbel Green for the complainants, and Mr. David L. Follett for the defendants, De Wolf and Macy, Mr. Wm. S. Opdyke for the said 355
railroad company, and Mr. A. R. Lawrence for The Mercantile Trust Company, defendants.

It is ordered and decreed, and this Court doth on this eighteenth day of November, 1873, order and adjudge that without prejudice, nevertheless, to any rights acquired, or obligations imposed by the aforesaid order of this Court, bearing date the eighteenth day of September, eighteen hundred and seventy-three, or by the aforesaid order, this day entered in

the same cause, Abram S. Hewitt and John G. Stevens be, and they are hereby appointed Receivers in this cause, with power to enter upon and take possession of the railroad of said New York and Oswego Midland Railroad Company, and all its branches, extensions, and leased lines of railroad, together with all supplies of materials provided by said company to be used in the construction, reconstruction, and repair of said road, or to be used in operating the same with all side tracks, switches, station houses, warehouses, water stations, turn-tables, rights of way, and grounds in use or necessary, or convenient to be used in operating said road belonging to said company, also all locomotives, engines, cars, and rolling stock of every kind and description, owned by and belonging to said company, and all tools and implements used in operating said road, or provided therefor, and all machine shops, and all workshops, and the machinery, tools, and implements therein, and stock of wood, iron, or other materials on hand, belonging to said company to be used in the construction of shops or shop machinery, and all money credits and choses in action belonging to said company, and all other property, real or personal, of whatsoever name, nature, or description, and wheresover situate, belonging to said company, and provided by it to be used in the prosecution of its business, whether the same be in actual use or not, and the same to hold, use, and dispose of under the order and direction of this Court, to be made from time to time herein and therewith, until otherwise ordered, the said Receivers shall operate said company's road, extension, leased lines, and branches throughout the whole extent thereof, according to the usual course of business thereof, and to the best advantage, for the interest of parties concerned, and generally to put and keep said road, its rolling stock and fixtures and appurtenances in thoroughly good, efficient, and safe condition for use, and to provide either by lease or by purchase, for cash or credit, or partly for cash and partly on credit, rolling stock and equipment whenever necessa[illegible] And the corporate officers of said company, their agents, servants employees, having the custody and charge of said property and effec[illegible] said company, or any part thereof, to be taken possession of by sai[illegible] Receivers as aforesaid, are hereby ordered and required forthwith, upon the request of said Receivers, to surrender the same; and all books, papers, and accounts, and other evidences of debts due to said company to them, their agents or employees, and all of the same, without any such actual delivery, shall immediately upon their giving a bond and taking the oath herein required, be held and taken to be vested in their actual possession, and subject to their order, for all purposes needful in the prosecution of the business of the said company.

And the said Receivers are hereby authorized and empowered to retain, employ and pay all such agents, servants, laborers, clerks and assistants, as in their discretion may be necessary under them to carry this order into effect with economy and prudence, and to make, enter into, and perform all

contracts for the obtaining of necessary supplies, and for the prosecution 361
of said business. And for the purposes above named, and for the purpose of paying all rentals upon leased lines of railroad, and equipments, and terminal expenses, said Receivers, subject to the further order of the Court, are hereby fully authorized and empowered to appropriate and apply the property, money, and effects aforesaid, vested in them as aforesaid, with the current earnings of said road and business, so far as the same may be necessary, and said Receivers are hereby ordered and required to keep or cause to be kept in a regular and systematic order, strict and regular accounts of the business of said trust in their hands, and of the daily 362
receipts and disbursements of money by them, showing the items in detail, and they are required to file in the office of the Clerk of this Court, once in every three months, an abstract account of their receipts and disbursements, and shall as often as required by the special order of the Court, make full reports of their doings and settle their accounts.

And the said Receivers are also hereby ordered and required to deposit the surplus money accruing in their hands, over and above their current expenditures, in The United States Trust Company, in the City of New York, on interest to their credit as Receivers herein. 363

It is further ordered by the Court that said Receivers, out of the net earnings which may come into their hands from the operation of the road, and as speedily as the same can be done without prejudice to the current business, pay all such balances now due to the operatives and persons employed heretofore by the said company in the prosecution of its business in operating its road, and in maintaining and keeping the same in repair since the first day of January, 1873, also all such balances of accounts due to other railroad companies by way of rentals or terminal expenses, since the first day of January, 1873, as it shall be necessary to pay to secure the 364
future operation of the said railroad and leased lines.

The Receivers shall also pay all sums which are now or may hereafter become due for taxes upon any of the property coming to their hands as Receivers; also all interest or principal due, or to become due upon any purchase of property made by the said railroad company, and which in the judgment of the said Receivers, it will be beneficial to the estate in their possession to pay; also all such sums as may be due for rights of way, or for fencing as in the judgment of the said Receivers, it will be beneficial to the estate in their possession to pay; also to purchase such additional 365
rights of way as may be necessary for the operation of said road, its branches and extensions.

And to this end said Receivers are authorized to audit all claims and accounts justly due from said company, so authorized to be paid, as aforesaid, and shall report the same to this Court, as may be required from time to time, with the evidence thereof in each case.

366 And the said Receivers are further directed to proceed with all practicable dispatch, after they enter upon the discharge of their duties, to take an inventory of all and singular the property and effects of every description which may come to their possession, or under their control, in virtue of this order, and to file such inventory in this Court.

And the Receivers are further empowered, in their discretion, to remove any of the officers or employees of said railroad company other than the President and Directors thereof, and such other officers as pertain to and are necessary to maintain the corporate organization; but, notwithstanding this
367 reservation, the entire management of said road, and the power to appoint and remove all superintendents, engineers, and other agents or employees in any way concerned in the operating of said road, shall belong to the Receivers.

And for the purpose of providing money for the payment of amounts due to employees, for the purchase of rolling stock, equipment and supplies, and for the payment of interest and principal on property purchased by the said Receivers, or said railroad company, and of sums due for rights of way, and for such additional rights of way as may be
368 necessary to purchase for the operation of said railroad, and for fencing and for the payment of any rental due for leased lines, said Receivers may, from time to time, issue their certificates in such general form as shall be approved by this Court, providing for the payment of the sums therein respectively named out of any moneys applicable for that purpose, the amount of which certificates outstanding at any one time shall not, in the aggregate, exceed the sum of one million four hundred and twenty-five thousand dollars, until the further order of this Court, and shall bear interest at the rate of seven per centum per annum, and the sum or sums
369 represented by such certificates shall, unless previously discharged, be paid out of any moneys realized upon a foreclosure and sale of the mortgaged property mentioned in the Bill of Complaint, equally with any other liabilities incurred by the Receivers in the management of the said property, the operation of the said railroad, and the protection of the said property coming into their hands as such Receivers.

The Receivers, acting in pursuance of this or any order or decree of this Court, herein, in good faith, shall not be individually liable for any breach of any contract entered into by them as such Receivers, or for the
370 payment of any certificate or other obligation given by them as such Receivers, or for any injury to the person or property of the parties or of third persons, or for the faults or negligences of their subordinates; but the property, moneys and effects that shall at any time be in their hands as such Receivers shall be bound for all such breaches or wrong, and may from time to time, as may be necessary, be applied in such manner as this Court shall direct.

And it is further ordered that the said defendants have leave, at any time within ninety days from this date, to show cause, if any they have, 371
why this order should be set aside, vacated or amended, upon giving to the complainants or to their solicitors reasonable notice of their motion, and that upon the hearing of such motion the matter of the same shall be considered, without prejudice to the defendants, from the order now entered.

It is further ordered that said Receivers, before entering on their duties aforesaid, shall enter into a bond, with two sureties, to the acceptance of this Court, in the penal sum of one hundred thousand dollars, conditioned for the faithful performance of all duties enjoined upon them by this order. 372

And it is further ordered that the Receivers in this cause shall assume and become liable as such Receivers, but not individually, for all debts or obligations which may have been incurred by Abram S. Hewitt, as Receiver, or which shall hereafter be incurred by Abram S. Hewitt and John G. Stevens, or either of them, as Receivers, in the proper discharge of his or their duty, as well under the order of the eighteenth day of September, 1873, as under the order this day entered in said cause wherein Abram S. Hewitt is complainant and the said railroad company and others are defendants. 373

And it is further ordered that the said Abram S. Hewitt and John G. Stevens shall take an oath before the Clerk of this Court, faithfully to perform their duties as Receivers in this cause.

(Signed) SAMUEL BLATCHFORD.

[SEAL.]

Attest: KENNETH G. WHITE, *Clerk.*

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.

I, John I. Davenport, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages contain a true and complete transcript of the order, statement, answer, or return made and granted by the judges of the said Court, in answer to a certain order issuing out of the Supreme Court of the United States upon the petition of Conrad A. Jordan and others, petitioners, directed to the said judges, and commanding them to show cause before said Supreme Court why a writ of mandamus should not issue to them, the said judges, commanding them to allow the appeal of the said petitioners, pursuant to the prayer of the said petition, as the same order, statement, answer, or return, now remain of record and on file in said office.

In testimony whereof I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 9th day of December, in the year of our Lord one thousand eight hundred and seventy-six, and of the independence of the said United States the one hundred and first.

[L. S.]

JOHN I. DAVENPORT,
Clerk.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

IN THE

Supreme Court of the United States.

EX PARTE CONRAD N. JORDAN AND others, Petitioners for mandamus in the matter of Abraham S. Hewitt and others, Trustees, etc.

against

THE NEW YORK & OSWEGO MIDLAND Railroad Company and others.

Statement of Case for Petitioners.

In the month of November, 1873, John G. Stevens, Charles W. Opdyke and Abraham S. Hewitt, commenced an action *in rem* in the Circuit Court of the United States, for the Southern District of New York. The complainants sued as mortgagees in trust of the property of the New York & Oswego Midland Railroad Company, and the object of the suit was to enforce the lien of mortgages held by the complainants to secure

the principal sum of eight million dollars. Among the papers on this application is a copy of the prayer of the bill of complaint, by which it appears that the suit was brought for the benefit of the holders of the bonds issued upon the security of the mortgages held by the complainants, and that the object of the proceeding was to get a decree for the benefit of such bondholders. The real parties in interest in the suit were therefore such bondholders. The final decree was rendered on the second day of October, 1876, nearly three years after the suit was commenced, (fol. 10, 88). In the meantime, and on the thirtieth of June, 1875, Conrad N. Jordan and his associates, the present petitioners, were admitted as defendants in the suit, intervening *pro interesse suo*, as holders of bonds to the amount of millions, and in that capacity they took an active part in the proceedings in the suit; they were allowed to litigate the question of the amount due upon the mortgage; they were allowed to litigate the amount of expenses claimed to have accrued in the progress of the suit, and claimed to be represented by receivers' certificates, issued in the course of the suit. At the time when they became defendants all which had been established as against them, or in their favor, was that a mortgage existed, but the amount due upon it had not been computed, nor had the amount of the expense of the administration of the property in the Court been ascertained. These were all ascertained after the admission of the petitioners as intervenors. The record shows, (fol. 106), that they filed exceptions to a master's report upon certain matters referred to the master; and also shows, (fol. 108, 109), that they were heard by counsel on the making of the final decree. The final decree, (fols. 88 to 225) affected their interest in several respects:

1. At fol. 110, the mortgage under which they claimed an interest was adjudged to be valid.

2. At fol. 149, the whole amount of principal money secured by the mortgage, namely, eight million dollars, was adjudged to be due.

3. Certificates of indebtedness issued by receivers appointed in the suit, pending the suit, were adjudged to be liens upon the property and to be collected from the proceeds of sale, to the amount of about $1,500,000 with interest thereon besides (fol. 150 to 156).

4. Unpaid coupons, amounting in all to upwards of three hundred thousand dollars ($300,000) (folios 137 to 147), and maturing prior to the first day of November, 1873, were adjudged to constitute a part of the mortgage debt.

5. In the distribution of the proceeds of sale it was ordered (folio 179), that the receivers' certificates should be paid and satisfied before anything should be paid to bondholders.

6. It was then provided (folios 180 to 187), that the past due coupons should be paid in the order in which they matured; and the parties to whom such payments were to be made were specified, although such parties were not up to that time all of them parties in the suit. George Opdyke & Co. were not defendants, nor were Drexel, Morgan & Co., nor was the Mercantile Trust Company, except as a trustee. In its own right, the Mercantile Trust Company was not a party defendant.

7. The mortgaged property was to be sold (folio 163) for the purpose of satisfying all the receivers' obligations, coupons, etc.

In all these respects the decree affected the interests of the petitioners, it being shown by the petition, on the filing of which they were allowed to intervene, and which was uncontradicted, that they were then

holders of bonds (folio 10), to the amount of three million dollars ($3,000,000).

Although the petitioners had thus been allowed to assert their rights and to participate in the proceedings in the case at all of its most important stages, yet when the final decree had been announced, after hearing them, their right to continue their intervention for the purpose of an appeal was denied, and the appeal applied for by them was disallowed. In other words, they were told that the Supreme Court of the United States had no authority to hear them, and they no right to approach it for a hearing.

They now apply to this court for a mandamus to the judges of the Circuit Court, requiring those learned judges to allow an appeal; and the question involved in the application is simply whether or not, by the proceedings in the court below, the petitioners have acquired such a relation to the *res* which is the subject of controversy, and to the other parties to the suit, as entitles them to raise by appeal in this court the same questions which they raised and were heard upon, in the court below.

To state the question in another form, it is, substantially, what is the relation to an equity suit *in rem* of parties having interests in the *res*, who have been allowed before decree to intervene in the proceedings in the suit *pro interesse suo*, and as to whom decrees have been obtained, diminishing and reducing their claims without their consent and against their opposition?

Upon this question counsel for the petitioners respectfully submits the following points:

First.—According to the recognized course of equity practice, in all cases of suits *in rem*, such as foreclosures, partnership suits, suits for the execution of trusts, creditors' suits, accountings, service of a

subpœna is not the only method of making parties defendant to a suit. They may be brought in on their own petition, or by availing themselves of a decree for their benefit, or by purchasing an interest in the *res;* and when thus brought in they are parties as effectually and to all intents and purposes as if brought in by subpœna. The moment they place themselves, or are, by the action of the court, placed in such a relation to the suit that the decree binds them or their claim of interest, they are parties to the litigation.

Calvert on Parties in Equity, p. 55 *to* 66, 17 *Law Library.*
9 *Peters,* 483, *Harrison* vs. *Nixon.*
7 *Paige,* 585, *Innes* vs. *Lansing.*
2 *Black,* 539, *Ogilvie* vs. *Knox Ins. Co.*
1 *Wallace,* 655, *Blossom* vs. *R. R. Co.*
6 *Id.,* 186, *re Howard.*
11 *Id.,* 479, *Galveston R. R.* vs. *Cowdrey.*

Second.—The petitioners, in this case, were parties, by name, to the record, before final decree. The suit was for their benefit. Its object was to establish and collect their debt. The order *pro confesso* established that there was a debt, and that the plaintiffs were the lawfully constituted agents of the bondholders to collect it. But it did not establish who the bondholders were, nor the quantum or amount of the debt, nor the relative interests of the bondholders in it, nor the order or method of distribution of the proceeds of sale. All these were still open questions, upon which the court required information and argument, and the petitioners were admitted as parties to the proceedings for the purpose of determining those questions.

Third.—The concession that the petitioners were entitled to be heard in the court below, involves a concession that they are entitled to be heard in the court above. If they had a standing to approach the original court through its masters and on a reference *ad computandum*, and on the final hearing—if they had a legal right to claim a share of the fund then and to contest the conflicting claims of others—surely the making of a decree did not end their right of intervention, nor their privilege of protecting their own interests. That right and privilege survived the decree, and involve the right and privilege of an appeal.

2 *Daniels Ch. Pr.*, 1460.

24 *How.*, 186, *Kellogg* vs. *Forsyth.*

Fourth.—To illustrate these propositions, reference is made to the fact, that by the final decree itself interests are recognized and declared in favor of parties who were neither plaintiffs nor defendants originally, but who could have become parties only by their permitted and orderly intervention before the master. The decree awards sums of money to the holders of receivers' certificates. The interests arising from the ownership of receivers' certificates was not in existence when the suit was commenced. It grew up *pendente lite*. The decree also awards sums of money to George Opdyke & Co., and Drexel, Morgan & Co. They were not originally parties to the bill. How came they to be parties to the decree, except because they availed themselves of the invitation and permission of the court to present their proofs to the Master? And if, after having availed themselves of that invitation, their claims had been rejected, would not the invitation and their acceptance of

it have been a snare and a delusion if it resulted in a decree which forever concluded them without right of appeal?

8 *Peters*, 4, *Stratton* vs. *Jarvis*.
4 *W. C. C.*, 492.
5 *Wallace*, 820, *Wittenberg* vs. *U. S.*
2 *Id.* 302, *Bronson* vs. *R. R. Co.*
6 *Id.* 739, *Crawshay* vs. *Soutter*.

Fifth.—Considering the nature of the suit, and the relation of the complainants to the property and its proceeds, it was the duty of the court below to determine not only the amount of the debt, but to award the fund to its true owners. This court will observe that the final decree did not direct the proceeds of sale to be paid to the complainants; a distribution was awarded among certificate holders, bondholders and coupon holders. The court having got possession of a trust fund, proceeded to execute the trust, regardless of the legal title. It treated the suit as one for distribution as well as for collection. Then it exercised a judicial, not an arbitrary or discretionary, function. And can it be said that the exercise of a judicial function by a Circuit Court, upon a final hearing, touching the distribution of many millions of dollars, and acting directly upon the interests of parties regularly before it, is not reviewable here? Has this court less judicial power than a Circuit Court?

9 *Wallace*, 239, *Steamboat Burns*.
10 *Id.*, 258, *N. O. Railway* vs. *Morgan*.
11 *Id.*, 267, *M'Veigh* vs. *U. S.*

Sixth.—The Circuit Court does not hold the key to

the gates of this court. Saving exceptional cases (which prove the rule and which are created by statute) it belongs to the Appellate Court to determine its own jurisdiction, and to say who are and who are not entitled to appeal. Otherwise this court would be at the mercy of the Circuit Court. The practice of applying to a judge to allow an appeal is not prescribed by statute. The existence of the practice is simply implied. Its object is not to open discussion as to the merits of the decree, but simply that the judge may, in the discharge of a ministerial duty, authenticate the proceedings as to their regularity and authenticity, and as to the identity of the parties.

Seventh.—The mandamus should be granted, as prayed for.

F. N. BANGS.
Of Counsel for Petitioners.

Martin B. Brown, Law Printer and Stationer, 201 and 203 William street.

In the Supreme Court

OF THE UNITED STATES.

Ex parte CONRAD N. JORDAN and others, Petitioners for Mandamus in the Matter of ABRAHAM S. HEWITT, and others, Trustees, etc.,

against

THE NEW YORK AND OSWEGO MIDLAND RAILROAD COMPANY, and others.

Statement of Case for the Respondents, the Judges of the United States Circuit Court, for the Southern District of New York.

The respondents are called upon to defend and support their action in refusing to allow the petitioners to appeal to this court from a decree in an action, *wherein the petitioners were parties defendant against whom the bill of complaint and supplemental bill had been taken*, AS CONFESSED (Petition, folios 225, 97, 102).

The petitioners claimed to be aggrieved by five different orders recited in the decree to have been previously made (Petition, folio 209), and also by eighteen different clauses of the decree itself (Petition, folios 209–224); and

from such parts of the said decree as they claimed to be aggrieved by, they prayed an appeal (Petition, folio 225).

The petitioners did not claim to be aggrieved by, nor did they ask to appeal from such parts of the decree as adjudged the mortgage to be valid (Petitioners' brief, p. 2, subd. 1), or the principal sum of $8,000,000 to be due (Ibid, p. 3, Subd. 2.) The alleged grievance of the petitioners resulted from only two things, to which all the verbiage may be reduced, viz.: They claimed to be dissatisfied, first that receiver's certificates of indebtedness had been issued, and that the payment of these certificates was made a first lien upon the mortgaged property, and second that unpaid coupons maturing prior to the commencement of the foreclosure suit were adjudged to be part of the mortgage debt, to be paid in the order of their maturity.

The right of the petitioners to present their alleged grievances even in these two particulars, (more than which they cannot claim) for the consideration of this Court, may and does depend upon their course in the court below, with reference to these questions. It is not supposed that the appellate jurisdiction of this Court can be invoked, unless in the Court below some action was taken against the objection of the petitioners expressed in the proper time and manner. It is submitted in behalf of the respondents that the petitioners never did legally object to any order or decree, or to any part of any order or decree in the Court below.

Amongst other facts, to be urged in support of this proposition of fact, the following are submitted: (1) Each of the five orders by which they claim to be aggrieved shows by its date (Petition, folio 209) that it was made and entered before the petitioners, or either of them became parties to the suit. The orders admitting them (Petition, folio 240. Return 248–252) and entered respectively June 30, and July 8, 1875, specially provided that the admission of these petitioners should be without prejudice to proceedings already had, and neither the petition nor return

shows that the petitioners, or either of them, have ever applied for a rehearing or review of any order theretofore made. (2) Before the petitioners were admitted as parties to the action the bill of complaint and supplemental bill had been taken as confessed (folio 97, petition). (3) The two principal orders complained of, to which the other three are subordinate, made before the petitioners became parties, had been so made upon the consent of all the parties to the action (Return, folio 58, 87). (4) The parts of the decree, relating to receiver's certificates, by which the petitioners claimed to be aggrieved, and from which they prayed an appeal, had been previously embodied in substance in a master's report (Return, folio 262–293), upon which the decree was based (Petition, folio 106). This report had been filed November 13, 1875 (Petition, folios 262, 297), and the petitioners filed no exceptions thereto until January 5, 1876 (Petition, folio 106; Return, folio 295), after the expiration of the time within which exceptions to a master's report may be filed under the 83d rule of practice in equity. A comparison of these exceptions (Return, folios 296–310), with the parts of the decree by which petitioners claimed to be aggrieved (Petition, folios 209–224), shows that the decree was objectionable to the petitioners in so far as it embodied the findings of the master, to which, however, no valid objections had ever been taken.

It is, therefore, contended that the action of the Judges of the Circuit Court, disallowing the appeal, was correct, and the following points are submitted in support thereof:

The facts in the case are sufficiently shown in the papers in the proceeding, which may be referred to by the following table of contents, appended for the convenience of the Court.

		Folios.
Bill of complaint	Return	311 *et seq*
Affidavit of A. S. Hewitt, November 13, 1873	"	12–22

		Folios.
Affidavit of Theo. Houston, November 13, 1873	Return	24–31
Order appointing receivers, November 18, 1873	"	32–58
Receiver's petition for leave to issue certificates, December 22, 1873	"	60–83
Notice of motion thereon	"	84–88
Order that receivers issue certificates, December 23, 1873	"	89–103
Receiver's report, April 17, 1874	"	104–122
Receiver Hewitt's application for discharge, March 10, 1875	"	124–151
Master's report passing accounts of receiver, April 26, 1875	Return	153–173–233
Letter of N. A. Cowdrey	"	174
Agreement with R. I. Locomotive Works	"	177
Agreement with Cummings Car Co	"	189
Agreement with Tredegar Co	"	203
Notice for confirmation of such report,	"	236–239
Confirmation of report	"	246
Petition of Jordan and others to be made parties defendant, June 28, 1875	Petition.	5–21
Schedule "A."—Proposed plan of reorganization, May 14, 1875	"	22–45
Schedule "A."—Proposed plan of reorganization, February 25, 1875.	"	45–55
Schedule "B."—Proposed authority to Cowdrey	"	56–58
Schedule "B."—Cowdrey's petition, May 22, 1875	"	59–65
Order admitting Jordan and others as parties defendant, June 30, 1875	"	240–243
Petition of Williams & Houston to be made parties defendant, June 28, 1875.	"	67–78
Order admitting Williams & Houston as parties defendant, July 8, 1875.	Return.	248–252
Order of reference to White, Master, September 15, 1875	"	257–261

Report of White, Master, Nov. 13, 1875.	"	262–293
Extract from Cowdrey's testimony before White, Master.....	"	295
Exceptions of petitioners to report of White, Master, January 5, 1876.....	"	296–311
Decree and disallowance of appeal.....Petition.		88–225
Supplementary affidavit by Cowdrey....	"	226

POINTS.

First.

It was within the discretion of the Judges of the Circuit Court, under the circumstances of the case, to allow or disallow the appeal of the petitioners; the exercise of such discretion being subject, of course, to the review of this Court by mandamus.

> It has been decided by this Court (*Barrel* vs. *Transportation Co.*, 3 Wall, 424), that it has no authority to act on a petition of appeal, unless accompanied by an allowance of the appeal by the Circuit Court.
>
> Since this necessity for an allowance exists, it seems to require of the Judges below the exercise of something more than mere ministerial functions.
>
> In the cited case, it does not appear that the record was not properly made up and authenticated by the Clerk of the Circuit Court, which would seem to be sufficient, were it true as alleged in petitioners brief (point 6, page 8) that "the ex- "istence of the practice (of applying to a judge to "allow an appeal) is simply implied." And that

its object is * * * * "simply that the judge "may, in the discharge of a ministerial duty, "authenticate the proceedings as to their regu- "larity and authenticity, and as to the identity of "the parties."

The certificate of the clerk, (with an examination of the record certified), assures the Appellate Court upon all these points as conclusively as that of the Judge.

The use of the term "allow" indicates on the part of the officer or body to whom the petition for an "allowance" is addressed, the exercise of judgment; the prayer to the Judge below is not that he will certify or authenticate, but that he will *allow* an appeal.

If the court below has no discretion in the matter, then a party, defendant to an action, who has never taken any steps therein, beyond entering his appearance, may, upon final judgment, insist upon the right to appeal therefrom, although he has never taken any objection thereto, or to any intermediate proceeding. It is not suggested that such is the purpose of the present petitioners, but if such a course is admissible, then a defendant, who does not even pretend to any legal defense or objection to a judgment, can take advantage of the obstruction of the calendar of this Court, and defeat and delay the enforcement of such judgment for two years, although it be confessed that so soon as the appeal is reached in this Court it must be decided against him.

The relief from the possibility of such a perversion of the forms of law is to be found in the recognition of a discretion in the judge below, and the arbitrary or unreasonable exercise of that dis-

cretion is not to be feared while this court possesses the sufficient and summary power of review by means of mandamus.

Such a course does not in any degree interfere with the right of the Appellate Court "to say who "are and who are not entitled to appeal," but merely provides that its opinion on the subject shall be sought in a manner least likely to produce injury to parties litigant who have the presumption of being in the right, in so far as they have a judgment in their favor.

No possible injury can result to the petitioners from the fact that their alleged right to appeal is considered by this court, in a *mandamus* proceeding instead of upon the hearing of the appeal.

Second.

The bill of complaint and the supplemental bill having been taken as confessed against the petitioners, they are not entitled to appeal from the decree entered thereon.

(*a.*) *As to the position of the petitioners.*

The complainants had filed their bill (Nov. 15, 1873), the main objects of which were, of course, to obtain immediate possession of the railroad; to procure a sale thereof; and to distribute the proceeds so far as was necessary among the bondholders for whom the complainants were trustees (see return, folio 311, *et seq.*)

No one appearing to contest, the Court, in furtherance of the object sought by the complainants, appointed receivers of the railroad (Nov. 18, 1873

—return, folios 32–58); issued various orders intended to direct and assist the receivers, as officers of the Court, in the administration of their trust (order that receivers issue certificates, Dec. 23, 1873—return, folios 89–103); and passed upon and approved the accounts of the receivers as to the manner in which they had carried out these orders (Receiver's report, April 17, 1874—return, folios 104–122; Master's report, April 26, 1875—return, folios 153–173; confirmation of report, May, 1875—return, folio 246).

After all this had been done, the petitioners (as bondholders and *cestui que trusts*) made their applications to be admitted as parties to the action (Jordan *et al.*, June 28, 1875—petition, folios 5–21; Williams and Houston, petition, folios 67–78).

In each application the petitioners disclaimed any purpose of delaying or defeating the main object of the action (petition, folios 17–75), and expressed dissatisfaction only with the manner in which the Court was administering upon the mortgaged property through its officers, the receivers (petition, folios 13–14, 72–73).

They, therefore, "solicited leave to intervene in "the suit, either as plaintiffs or defendants, * * "* * * to protect the interests committed to "their charge and with leave to appeal from time "to time to the Supreme Court of the United "States from such orders and decrees in this action "as may be the proper subject of appeal, and with "leave to appear upon the taking of testimony in "this cause, and upon any application which may "be made to the Court for any disposition of any "part of the property in dispute" (petition, folio 15).

Instead of granting the large relief sought, the Court made its orders (June 30, 1875, petition, folios 240–243; July 8, 1875, return, folios 248–252), admitting the petitioners as defendants, "in the "same manner and with like effect as if they were "named in the original and supplemental bills "as defendants having or claiming an interest," but not "authorizing the said defendants to answer "the original or supplemental bill unless such "authority shall be given upon special application "to the Court."

The effect of these provisions was merely to bring the petitioners into the action as parties against whom the bill had been taken as confessed, while in further limitation of their position, with reference to the intermediate steps in the action, it was provided that this order should be "without prejudice to the proceedings already had," leave "being given to the petitioners to apply for a "rehearing or review of any order heretofore made, "upon due notice to the parties interested."

Until it is shown that some such application was made to the court below for a review or rehearing of any order, it is unnecessary to consider the effect of this last clause. The petitioners were thus brought into the suit as parties on the record, against whom the bill had been taken as confessed, and against whom all preceding actions and orders were declared to be in force until impeached and reversed.

(*b.*) *As to the rights of the petitioners with reference to the subsequent proceedings.*

Said Mr. Justice Bradley of such a defaulting defendant, against whom a bill in equity had been taken *pro confesso* (*Frow* vs. *De La Vega*, 15 Wall.,

552–554): "The defaulting defendant has merely "lost his standing in court. He will not be entitled "to services of notices in the cause, nor to appear "in it in any way. He can adduce no evidence; "he cannot be heard on the final hearing."

It would, consequently, appear that the petitioners—admitted as a favor, and therefore properly upon condition—acquired by such admission no absolute right to participate in the future litigation.

They had asked for such right specifically (petition, folio 15), but the court, disregarding their request, had given to them only the position of defaulting defendants, as described by Mr. Justice BRADLEY (*supra*).

It might have been rightly considered that they were already in court as participants in the action in the persons of their trustees, the complainants (*N. J. Franklinite Co.* vs. *Ames*, 1 Beas., [N. J.] 511); and the court, to avoid the undesirable spectacle of a party suing himself, admitted the petitioners merely to an opportunity of observation and petition, and not to an opportunity of contest.

Nor was it inequitable or unreasonable to so limit and define their position. If their trustees, the complainants, were insufficiently protecting the interests of the *cestui que trusts*, these had their remedy by a direct action against the trustees, for which the court now substituted the summary proceeding of a petition. If their purpose was to prevent an unsatisfactory distribution of the fund upon which the court was administering, it was easy for them to obtain relief by filing a cross-bill (*In re Howard*, 9 Wall, 175). They could have adopted the same course as was pursued by Foster, Bardwell & McComb in the cited case.

Not being original parties, the petitioners acquired in the suit only the position which the Court chose to give them, and it did not choose to confer upon them the right or privilege to take part directly in the action.

Thenceforth they appeared before the Court and Master merely as observers, to obtain information upon which, should they feel aggrieved by any order or proceeding, they could base a special application for a review or rehearing thereof. Such an application being addressed purely to the favor of the Court, would or would not be granted in view of the other interests involved in the proceedings.

(c.) *As to the action of the Court with reference to the petitioners' subsequent appearance.*

Though it is assumed in the third point of the petitioners' brief that their title to be heard in the Court below, and to approach it through its Masters, was conceded, such a concession is not presented upon the record so directly as to become the foundation of any right in this Court. At most the fact, not necessarily the right, of such appearance is shown upon the record, in these three instances, and no more.

Their counsel appeared before the Master (return, folio 264), who listened to their allegations and proofs, but this indicated nothing more than did the courtesy which the same Master had shown, on a previous reference, to one of the petitioners, Mr. Cowdrey, though, at that time, he made no pretence to a standing in court (return, folios 158, 174).

After the Master had filed his report (though so long after as to be ineffectual), the petitioners

filed their purported exceptions thereto (return, folio 295). It will, however, hardly be claimed that the mere filing of a paper in the Clerk's Office by the petitioners themselves, in any way committed the Court to a further recognition of them.

On the coming in of the report the petitioners, for the first time, asked and received from the Court itself its understanding as to the effect of the order admitting them.

It declared (petition, folio 97, 102) that the bill of complaint and the supplemental bill had been taken as confessed against them; it heard their counsel (petition, folio 108) recite their objections (folios 208–225), and, thereupon, disregarded these objections; and, finally, it announced that these objections did not constitute a basis of appeal, because the petitioners were without a standing in court (folio 225).

Whoever else may have been in doubt as to effect of the order admitting the petitioners, very little seems to have been felt by the Court which had made the order, and which so effectually interpreted it when the petitioners first sought to express their understanding of it.

In view of the original attitude of the petitioners, with reference to the action; of the conditions upon which they were admitted as parties to the record; of the fact that they never afterwards applied to the Court below for a review or rehearing of any precedent order, nor for leave to answer the bill of complaint which had been taken against them, *pro confesso*; in view of all these facts, it does not seem that the Court below was in error in deciding that the petitioners, having presented no answer below, were in no position to urge objections on appeal.

Third.

An inspection of the record shows that the petitioners have not, with reference to the subject of their principal objection, ever put themselves in an attitude to appeal.

Though the Court, upon this application, may not choose to consider the merits of the case, it may look into the record so far as to discover whether the proceedings have been so taken as to form the basis of an appeal.

An inspection of the record (petition, folios 208–225) shows that *the* proceeding in the action which most aggrieved the petitioners, were the issues of " receiver's certificates of indebtedness," and upon their objection to these issues substantially rests their appeal.

What were these certificates, and how do the petitioners stand in a position to question them?

In November, 1873, and before the most active petitioner, Mr. Cowdrey, had acquired any interest in the property (return, folio 295), the Court assumed the control of the railroad by the appointment of receivers (return, folios 32–58).

The order of appointment was founded upon two affidavits—those of Mr. Hewitt, the complainant, and Mr. Houston, one of the petitioners.

Mr. Hewitt (return, folios 16–21) stated that a large amount of the rolling stock then in use by the company had been partially paid for by it, but was held under agreement providing that the title to the property should remain in the vendor until the whole amount of the purchase money

should be paid (which agreements were subsequently annexed to his report by Master White, return, folios 177–232). That default in payment had been theretofore made, and that the stock, which was necessary for the operation and maintenance of the road, had been demanded by the vendors, who were, however, willing to make an absolute transfer of this property, so that it should become subject to the lien of the mortgage set forth in the complaint, upon receiving a certificate of indebtedness to be signed by the receivers who should be appointed in the action.

A similar statement was made with reference to the pay of the employees of the company, and the rental of certain leased lines.

Mr. Houston, the former secretary and auditor of the company, and one of the petitioners, stated in his affidavit (return, folios 24–30), that the immediate necessities of the property called for an immediate provision in cash, or its equivalent, of the sum of $1,415,000.

Upon these affidavits (return, folio 31), the Court made its order of November 18, 1873 (return, folios 33–57), appointing the receivers, and authorizing them (folios 51–53) to issue their certificates payable out of the proceeds of the sale, and for the purposes indicated, to an amount not exceeding $1,425,000.

This order was made after hearing counsel for all the parties who were then defendants in the suit, and with the acquiescence of all the parties thereto (return, folio 58). The petitioners, however, though not admitted to the action until eighteen months after the making of this order, upon which they never applied for a rehearing or review, included it among their grounds of appeal

(petition, folio 208), and this, notwithstanding the fact that in their plan for reorganization upon which alone they had made their combined movement they had recognized the existence of the certificates to the extent of $1,500,000 (petition, folio 48).

Immediately upon their appointment the receivers came to an understanding with the owners of the rolling stock and leased lines, to purchase the stock and discharge the rental, and to deliver in payment receiver's certificates (return, folios 62–82). They accordingly applied to the Court for leave to consummate the proposed transaction. Upon the application all the parties to the suit were represented by counsel, and it was stated to the Court, with general assent, that the matters referred to in the petition had been the subject of a conference, and that the proposed action had been acquiesced in as necessary by all parties (return, folio 88).

Thereupon the Court made its order of December 23, 1873 (return, folios 89–103), which was made a second ground of appeal by the petitioners, admitted seventeen months thereafter although they had never applied for a rehearing or review thereof (petition, folio 208).

In pursuance of the terms of this order, certificates in the form prescribed therein were issued to the holders of the rolling stock referred to, and the stock was transferred to the receivers and became part of the property now covered by the order of sale herein (return, folio 103).

In April, 1874, the receivers made and filed their accounts showing that they had issued certificates to the amount of over $902,000 (return, folios 118–120).

In April, 1875, it was referred to Kenneth G. White, as Master, to take and state the accounts of the receiver, which he did with the full knowledge of the petitioner's representative, Mr. Cowdrey (return, folios 152, 175–177).

The Master's report, filed April 29, 1875, showed that the receivers were indebted, on account of certificates, for purposes and under contracts thereunto annexed, to the extent of $1,220,695.36 (return, folio 170).

Notice of the filing of this report, and of the motion to confirm the same, was served upon Mr. Cowdrey as bondholder and attorney for other bondholders (return, folio 243), and the report was duly confirmed, but no exception thereto was ever filed (return, folio 246).

The petitioners having in the meantime been admitted as parties to the record, the proceedings for the settlement of the final decree were had in July, August, and September, 1875 (return, folios 252–257). With a view to this final settlement, an order was made referring it to Kenneth G. White, as Master, to compute, ascertain, and report, among other things, what liabilities ha
" been lawfully and necessarily incurred by the
" receivers in the execution of their trusts," and
" also the amount of certificates of indebtedness
" and notes issued by said receivers under the
" authority of the Court, classifying them so as
" to show the dates of and authority for their
" issue, and the purpose of such issues, respectively,
" and to whom issued by the receivers, and the
" aggregate amount of principal due thereon, with
" interest" (return, folio 258).

The Master thereafter reported (folios 265–267) that the amount of the liabilities of the receivers for certificates was $1,399,911.15, and (folio 298)

that the certificates constituted a part of the indebtedness of the receivers or constituted a lien upon the mortgaged property.

This report was filed November 13, 1875 (folio 262), and was confirmed, as a matter of course, on the next rule day, after the expiration of one month, to wit, Monday, January 3, 1876. No exceptions were filed by any one save those of the petitioners (return, folios 295–310), which were filed January 5, 1876, after the report had already been confirmed, and more than one month after it was filed. The exceptions thus filed were consequently of no effect.

Rules of Practice for the Courts of Equity of the U. S., No. 83.

Thereafter, the petitioners asked leave to appeal from the decree, because it contained a provision for the payment of these certificates (petition, folios 209, 210, *et seq.*), and this notwithstanding these certificates had been issued by the authority of the Court, under orders which had never been questioned, in payment for property which had been in constant use in the management of the railroad and which was included under the order of sale, and after two separate reports of a Master stating the amount of these certificates, and finding them an expense of administration, and a lien upon the property had been duly filed without any exceptions thereto ever having been legally filed.

The last ground alone was sufficient for the disallowance of an appeal from this part of the decree founded on the Master's report. It has been repeatedly held that objections to a Master's report to

which no exceptions were taken in the Court below cannot be sustained on appeal.

Kinsman vs. *Parkhurst*, 18 How. (U. S.), 289.
McMicken vs. *Perrine*, 18 How. (U. S.), 507.
Hudgins vs. *Kemp*, 20 How. (U. S.), 45.
Hudgins vs. *Kemp*, 20 How. (U. S.), 54.

When the petitioners asked the Court for leave to appeal from this part of the judgment in which they had already (in legal contemplation) acquiesced, they asked for too much, and the Court properly denied a request which failed to properly discriminate.

Fourth.

Since the Court had a certain discretion in the matter; since the petitioners were without standing in Court; since their petition of appeal rested chiefly upon an assumed objection to a proceeding in which they had (in legal contemplation), acquiesced; the action of the Court below was proper, and the mandamus should be denied.

WILLIAM M. EVARTS,
Of Counsel for the Respondents.